

THE MINUTES OF THE REGULAR MEETING OF DECEMBER 9, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 9, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, and Ms. Ashley Paugh – Recording Secretary.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of October 28, 2021, and November 4, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0

OLD BUSINESS

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

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

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

Mr. Whitehouse stated at the conclusion of the public hearing for 2021-04 Autumdale (F.K.A. Fairmont) the Commission had requested additional transportation information; that the TOA Traffic Operational Analysis document has been received, added into the record, and circulated to the Commission.

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

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

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Ms. Stevenson moved the Commission recommend approval of the Ordinance to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 532-12.00-1.00, 532-12.00 27.00, 532-18.00-42.00, 532-18.00-44.00, and 532-19.00-1.00 from a Low-Density Area to the Developing Area based upon the record made during the public hearing and for the following reasons:

1. This area of Sussex County at the intersection of Delmar Road and Providence Church Road currently has two Area designations according to the Future Land Use Map in the Sussex County Comprehensive Plan: the Existing Development Area and the Low-Density Area. This Ordinance seeks to convert the subject properties in this location from the Low-Density Area designation to the Developing Area.
2. The subject properties were previously identified as being within the Developing Area according to the Future Land Use Map found in the 2008 Sussex County Comprehensive Plan. Returning these properties to the Developing Area is consistent with that prior Plan and Map.
3. The subject properties are currently zoned GR, AR-1, and B-1. The combination of these zoning classifications and the fact that (a) the properties are adjacent to the Map's "Existing Development Area" and (b) were previously identified as being within the Developing Area prior to 2018 make this Map amendment appropriate.
4. These properties are in close proximity to the Town of Delmar as well as the City of Salisbury and the commercial corridor and employment centers there. It is also near the Route 13 corridor of Seaford, Blades, and Laurel and those commercial uses and employment centers. These factors make this an appropriate location for the Developing Area Map designation.
5. There is central water and sewer available to these properties according to the public utilities that will provide these services.
6. This proposed Map amendment satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth Area, since: (a) the properties are in close proximity to the Town of Delmar and even the Maryland state line where significant commerce and employment exists; (b) the properties will be served by water and sewer; (c) the properties are near the Route 13 corridor; (d) the Map change will enable development that is in character with what exists or may occur in the area (including the adjacent "Existing Development Area" and GR and B-1 zoning; (e) the Map change will not adversely impact any major preserved lands; and (f) the properties in question are not in close proximity to any water bodies.
7. While the Office of State Planning Coordinator has objected to this Map Amendment, the County in its Comprehensive Plan "is signaling that selected new growth areas may be needed to accommodate future development in places the State does not currently view as growth centers according to its 'Delaware Strategies for State Policies and Spending' document". Here, when the properties were previously identified as being in the Developing Area, where they are adjacent to the "Existing Developing Area" and where they are so near the commerce and employment centers of Route 13, Delmar and Salisbury this is an appropriate location for the State to recognize that a return of these properties to the "Developing Area" designation is appropriate.
8. By the terms of the Delaware Strategies for State Policies and Spending document, all land-use authority remains vested with Sussex County. This is reiterated within the current Sussex County Comprehensive Plan. While the County certainly takes into account the State's recommendations with regard to a Map amendment, the circumstances that have been presented with this application justify a revision, if not a correction, to the Map.
9. This recommendation is consistent with the Commission's prior recommendation for this Future Land Use Map as part of the process to adopt the current Comprehensive Plan. That prior recommendation identified these properties as being within the Developing Areas.
10. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
11. Any proposed use under the Developing Area designation will still require public hearings and site plan approvals. This will enable the County, with ample public participation, to determine whether any specific use or type of development is appropriate here.

12. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

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

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

Mr. Robertson recused himself.

Mr. Jamie Sharp, Assistant County Attorney, was present on Mr. Robertson's behalf.

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Mr. Hopkins moved the Commission recommend approval of the Ordinance to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 235-23.00-2.02 (a portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01 from a Low-Density Area to a Coastal Area based on the record made during the public hearing and for the following reasons:

1. The parcels are currently designated as "Low Density" but were previously designated in the 2008 Comprehensive Plan as "Environmentally Sensitive Development Area" – which is a term that has since been changed to "Coastal Area." When the Planning & Zoning Commission vetted the current Comprehensive Plan, the Commission recommended that these parcels be designated as "Coastal Area", which is a growth area. After the final public hearing on the 2018 Future Land Use Map in the Sussex County Comprehensive Plan, however, County Council removed the parcels from the growth area and designated the parcels as "Low Density"; which was the designation later certified by Governor John Carney in 2019. Returning the subject properties to the Developing Area is consistent with the prior plan and map.
2. This application seeks to convert the front portion of Parcel 235-23.00-2.02 and the entirety of the remaining parcels as Coastal Area. The rear portion of Parcel 235-23.00-2.02 would remain as Low Density.
3. The parcels, with the exception of Parcel 235-23.00-2.02, have frontage along Route 1. Parcel 235-23.00-2.02 is located immediately to the rear of Parcels 235-23.00-2.00 and 235-23.00-2.01.
4. These parcels are located nearby a planned grade-separated intersection (or overpass) at the Route 1 / Cave Neck Road intersection that is being constructed by DelDOT with on-ramps and off-ramps.
5. There are multiple public water service providers in the area.
6. While opposition noted concerns about the proximity to tidal wetlands, the nearest tidal wetlands are 625 feet away and most tidal wetlands are approximately a half-mile away from the areas proposed to be designated as Coastal Area.
7. The parcels are located adjacent to other lands designated as Coastal Area on the Future Land Use Map. Other nearby lands are also zoned C-1, C-3, and MR.
8. Lands to the south and west are designated as Coastal Area on the Future Land Use Map.
9. This proposed Map amendment satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth Area, since (a) the properties are near the presence of

existing public sewer and public water service; (b) the properties are within the County's Tier 2 for sewer planning; (c) the properties are near the Route 1 corridor; (d) the properties are near the planned overpass for the Cave Neck Road / Route 1 intersection; (e) the Map change will enable development that is in character with what exists or may occur in the area; (f) the subject properties do not contain any tidal wetlands; and (g) the Map change will not adversely impact any major preserved lands.

10. By the terms of the Delaware Strategies for State Policies and Spending document, all land-use authority remains vested with Sussex County. This is reiterated within the current Sussex County Comprehensive Plan. While the County certainly takes into account the State's recommendations with regard to a Map amendment, the circumstances that have been presented with this application justify a revision to the Map.
11. This recommendation is consistent with the Commission's prior recommendation for this Future Land Use Map as part of the process to adopt the current Comprehensive Plan. That prior recommendation identified these properties as being within the Developing Areas.
12. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
13. Any proposed use under the Developing Area designation will still require public hearings and site plan approvals. This will enable the County, with ample public participation, to determine whether any specific use or type of development is appropriate here.
14. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried to recommend approval of the Ordinance, for the reasons and conditions stated in the motion. Motion carried 3 – 2.

The vote by roll call: Mr. Hopkins – yea, Mr. Mears – yea, Ms. Stevenson – nay, Ms. Wingate – nay, Mr. Wheatley – yea.

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

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

The Commission discussed the Application which had been deferred since November 18, 2021.

Ms. Stevenson moved the Commission grant preliminary approval for Subdivision 2021-11 for Lightship Cove (F.K.A. Fisher Road) based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 97 lots on 48.94 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of 2 lots per acre.
4. The proposed development will still comply with all DelDOT roadway and entrance requirements.
5. There will be a 25-foot buffer from all non-tidal wetlands on the site and a 50-foot buffer from Bundicks Branch.

6. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.
7. The subdivision contains approximately 26.5 acres of open space, which represents about 54% of the site. There will also be approximately 7.5 acres of preserved woodlands within the site.
8. The project will be served by central water and sewer.
9. The location is in the Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
11. The subdivision will not adversely affect the neighboring and adjacent properties.
12. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
13. This preliminary approval is subject to the following:
 - A. There shall be no more than 97 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 54% of the site remains as open space and that 7.5 acres of existing woodlands are preserved as “Non-Disturbance Areas”.
 - C. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - F. There shall be a buffer that is at least 50 feet wide from all tidal waters, tidal tributary streams, tidal wetlands, perennial rivers, and nontidal streams including Bundick’s Branch. There shall also be a buffer that is at least 25 feet wide from all federal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
 - G. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - H. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path. A system of fully shielded and downward-screened streetlighting shall also be provided.

- I. Amenities including a pool and poolhouse shall be constructed and open to use by residents of this development on or before the issuance of the 60th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- J. There shall be a pathway installed around the central pond using crushed stones or similar materials. The location and type of materials used to construct this path shall be shown on the Final Site Plan.
- K. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- L. Street design shall meet or exceed Sussex County standards.
- M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- N. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 am through 2:00 pm on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- O. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- P. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby and they shall include the Agricultural Use Protection Notice.
- Q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- R. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- S. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant preliminary approval for Subdivision 2021-11 Lightship Cove (F.K.A Fisher Road), for the reasons and conditions stated in the motion. Motion carried 5 – 0.

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

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a repair shop to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 0.918 acres, more or less. The property is lying on the southwest side of East Trap Pond Road (S.C.R. 62), approximately 0.55 mile southwest of Hardscrabble Road (Rt. 20). 911 Address: 28274 East Trap Pond Road, Laurel. Tax Parcel: 232-9.00-5.01

The Commission discussed the Application which had been deferred since November 18, 2021.

Mr. Hopkins moved the Commission recommend approval of C/U 2274 for Jed James (R&J Farms Limited Partnership) for a repair business based upon the record made at the public hearing and for the following reasons:

1. The proposed repair facility is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or community. It is also small enough that it will not negatively impact traffic or nearby roadways. DeIDOT has stated that the traffic impact will be diminutive.
2. The location is mostly surrounded by farms and other large tracts of land. The applicant has tilled the surrounding land for the last 50 years and tills approximately 310 acres.
3. The proposed use provides a service to Sussex County farmers and small businesses in the area by providing a convenient location for diesel repair services for trucks and agricultural equipment.
4. There is a 40 by 45-foot building with 30-foot ceilings on the property that will be used for the business.
5. The applicant stated that he intends to have no more than 4 trucks being worked on at any one time. This small use, including the existing pole building, is very similar to the type of repair and maintenance work that a farmer would be permitted to do on his or her farm equipment under the property's AR-1 zoning.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The use shall be limited to diesel repairs on trucks and farm equipment. There shall not be any retail sales occurring on the property.
 - B. One lighted sign shall be permitted. It shall not be larger than 32 square feet per side.
 - C. Security lighting shall be shielded and downward screened so that it is directed away from neighboring properties and roadways.
 - D. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - E. All repairs shall occur indoors within the existing building or in outdoor areas in locations shown on the approved Final Site Plan. No outside storage of parts or other materials associated with the use shall be permitted.
 - F. The hours of operation shall occur between 7:00 am and 8:30 pm, seven days per week.
 - G. No junked, unregistered, or permanently inoperable vehicles, trucks, or trailers shall be stored on the site.
 - H. There shall be no more than 4 trucks or trailers on the site at any time.
 - I. There shall not be any parking in the front yard setback.
 - J. The parking shall be shown on the Final Site Plan and clearly marked on the site itself. Trucks and farm equipment shall only be parked and worked on within these designated areas.
 - K. All oils and other fluids shall be properly stored indoors in appropriate containers. The applicant shall also comply with all state and federal requirements for the disposal of these fluids.
 - L. There shall be sanitary bathroom facilities installed for this use. The type and location of these facilities shall be shown on the Final Site Plan
 - M. The site shall be subject to all DeIDOT entrance and roadway requirements.
 - N. Any violation of these conditions may be grounds for termination of this conditional use.
 - O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2274 Jed James (R&J Farms Limited Partnership) for the reasons and conditions stated in the

motion. Motion carried 5 – 0.

C/U 2275 Christopher L. Hooper

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District to allow for retail sales of antiques and collectibles to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 9.7 acres, more or less. The property is lying on the south side of Seashore Highway (Rt. 18/404), approximately 2.32 miles west of Dupont Boulevard (Rt. 13). 911 Address: 16842 Seashore Highway, Georgetown. Tax Parcel: 231-7.00-36.00

The Commission discussed the Application which had been deferred since November 18, 2021.

Mr. Hopkins moved the Commission recommend approval for C/U 2275 for Christopher L. Hooper for a conditional use for the retail sales of antiques and collectibles based upon the record made during the Public Hearing and for the following reasons:

1. The site is located along Seashore Highway (Route 18 and 404) approximately 2.3 miles from Route 13. This is an appropriate location for this low-intensity use.
2. The Applicant has stated that this will be a family-run business, with most, if not all, of the employees being family members.
3. This use will be located on a small portion of the Applicant's 9.7-acre property.
4. This low-intensity use will not adversely affect neighboring properties or area roadways.
5. No parties appeared in opposition to this application.
6. This recommendation is subject to the following conditions:
 - A. The use shall be limited to the retail sales of antiques and collectibles.
 - B. All merchandise shall be stored indoors.
 - C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.
 - D. All outdoor lighting shall be screened and shielded so that it does not shine on neighboring properties or roadways.
 - E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.
 - F. Any dumpsters shall be screened from the view of neighboring properties and roadways.
 - G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.
 - H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.
 - I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2275 Christopher L. Hooper for the reasons and conditions stated in the motion. Motion carried 5-0.

C/U 2276 Atlantic Well Drilling, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District to allow for a water well drilling business to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.04 acres, more or less. The property is lying on

the south side of Concord Road, approximately 0.16 mile southeast of the intersection of Concord Road, Baker Mill Road (S.C.R. 483), and Church Road (Rt. 20A). 911 Address: 10872 Concord Road, Seaford. Tax Parcel: 132-3.00-4.09

Mr. Hopkins moved the Commission recommend approval for C/U 2276 for Atlantic Well Drilling, Inc. for a conditional use for a water well drilling business based upon the record made during the Public Hearing and for the following reasons:

1. The property where this use is located is zoned AR-1, and it operates out of an Agricultural Building. This type of use is consistent with the underlying AR-1 Zoning and the type of uses that are permitted in that district.
2. A well drilling business in this location benefits the health, safety, and welfare of Sussex County residents, businesses, and the agricultural community.
3. Aside from maintenance of the equipment, all operations occur off-site, and no retail or similar uses will occur on-site. As a result, this use will not generate excessive amounts of traffic.
4. The use will not adversely affect neighboring properties or roadways.
5. No parties appeared in opposition to this application.
6. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a well drilling business. No retail sales shall occur from the site.
 - B. All equipment and vehicle maintenance shall occur inside of the approved buildings on the property.
 - C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.
 - D. All outdoor lighting associated with this use shall be screened and shielded so that it does not shine on neighboring properties or roadways.
 - E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.
 - F. Any dumpsters shall be screened from the view of neighboring properties and roadways.
 - G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.
 - H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.
 - I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Commission discussed the Application which had been deferred since November 18, 2021.

Motion by Mr. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2276 Atlantic Well Drilling, Inc. for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/Z 1941 Charletta Speaks-Floyd

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a B-2 Business Community District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.95 acres, more or less. The

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

The Commission discussed the Application which had been deferred since November 18, 2021.

Ms. Wingate moved the Commission recommend approval of C/Z 1941 for Charletta Speaks-Floyd for a change in zone from AR-1 to B-2 "Business Community" based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low density and medium-density neighborhoods.
2. The site is in the Developing Area according to the current Sussex County Comprehensive Plan. B-2 is an appropriate zoning classification in the Developing Area according to the Plan.
3. The adjacent property to the west is zoned B-1 along with several other parcels to the west and southwest. Further west, there are parcels that are zoned C-1 and CR-1. The property is also relatively near the boundary of the Town of Millsboro and the business and commercial uses that exist there. B-2 Zoning is appropriate in this location under these circumstances.
4. This location is along Route 24, which is a major arterial roadway between eastern and western Sussex County. B-2 zoning is appropriate along this section of Route 24 near Millsboro where other similar zoning exists.
5. The rezoning will not adversely affect area roadways or traffic.
6. The rezoning will also not adversely affect nearby properties or property values.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to the application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1941 Charletta Speaks-Floyd for the reasons and conditions stated in the motion. Motion carried 5 – 0.

PUBLIC HEARINGS

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

C/U 2279 Ron Sutton

An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family dwellings (11 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.035 acres, more or less. The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 0.66 mile south of Garfield Parkway (Rt. 26). 911 Address: 33309 Kent Avenue, Bethany Beach. Tax Parcel: 134-17.11-6.00.

Mr. Whitehouse advised the Commission submitted into the record is a copy of the staff analysis, a copy of the Applicant's site plan, a copy of a letter from Sussex County Engineering Department Utility Planning Division, a petition of opposition containing 64 signatures, with some appearing to be

duplicated, 10 letters of opposition, zero letters in support and three mail returns.

The Commission found that Mr. Ron Sutton, with Civil Engineering Associates, was present on behalf of the Applicant, The Christopher Companies for the Application Ron Sutton; that the owners are looking to construct 10 condominium units; that they submitted their design booklet along with the supplemental data which handle Coastal Zoning and design requirements; that the proposed project is called Windward Village; that it is a redevelopment of an existing 14 room motel, or also known as a bed and breakfast; that the site is approximately 1.04 acres; that the proposed project will create approximately 50 vehicle trips per day according to DelDOT's analysis; that the vehicle trips will have minimal impact on the surrounding area; that a DelDOT Service Level Evaluation request was submitted; that DelDOT does require the Applicant perform entrance improvements; that currently there are two entrances on the current property, an entrance on the north and south; that the Applicant will be eliminating both entrances and placing one entrance in the center; that this will also include the right-of-way dedications and shared-use path for pedestrian traffic; that sewer will be provided by Sussex County; that water will be provided by public water; that there is adequate capacity with a 12-inch water main running in front of the property; that stormwater management will be provided by two stormwater management ponds; that the tree line on the property will remain; that there area sporadic trees throughout the property; that the Applicant proposes to keep as many trees as possible; that the trees located in the middle of the property would have to be removed to facilitate construction; that the trees on the north side property line will remain; that currently there is a parking lot located almost up against the property line; that all the trees on the south side property line will remain; that currently there is a parking lot located very close to the property line, as well as dumpster storage areas from the adjacent condominium complex; that the proposed plan has changed some from the initial submission of 11 units; that the Applicant has reduced it to 10 units; that all units are 24-feet in width; that all units will have a total of four parking spots; that the units will have parking underneath, as well as two parking spots in front; that proposed is a pool and gazebo and other amenities within the area for residents to enjoy; that the stormwater management ponds are located on both sides of the entrance; that the impervious area on the existing site is approximately 1.33 acres; that the impervious area on the proposed site is approximately 1.48 acres; that the increase in impervious surface led to the two stormwater management areas; that the proposed project is a redevelopment of an existing bed and breakfast, consisting of 10 condominiums; that the property is surrounded by existing landscaping and woods, which will be maintained; that sufficient landscaping will also be installed to supplement the surrounding woods; that there will be minimum use of wetlands and flood plains; that there are no wetlands located on the property; that there is a small sliver of wetlands located in the right rear corner of the property; that there are no natural historical features located on the property; that the trees and buffers are important; that other than the trees and buffers there are no other views; that they are proposing the minimum requirement of 30% open space for the project; that there will be a minimization of tree, vegetation and soil removal; that there will be no soil removal; that they will be importing some soil to raise the site out of the flood plain; that they intend to keep as many trees as possible; that they will plant additional trees to create additional screening around the entire project; that they pulled all the units as far toward Kent Avenue as possible, while maintaining the buffer areas around the stormwater management; that there will be screening from objectual features, neighboring properties and roadways; that the property is surrounded by existing woods which will be maintained and supplemented with additional landscaping; that the original submission showed a four foot and a five foot fence; that they are now proposing an eight foot fence around the sides and rear of the property; that central water is available at the front of the property; that the site has access to sewer at the front of the property; that there is a Public Works document stating there is capacity and the Applicant will need to upgrade to provide service to the 10 units; that there will be minimization of erosion, sedimentation, changes in ground water levels and rates of runoff, that all of this will be controlled by the proposed stormwater management areas; that the stormwater management areas are in compliance with DNREC and Sussex Conservation District

requirements; that there will be one entrance; that there will be a 16-ft wide one-way lane which meets the Fire Marshal requirements for one way traffic and firetrucks; that they believe the proposed project will increase the surrounding areas property values; that the units in the surrounding area are currently being constructed in The Towns of Bayshore, which was approved in 2020; that the current price range for those units begins in the \$600,000 and moves into the \$800,000 range; that there is no preservation or farmland located on the proposed site; that there will be no negative impact to the surrounding schools, public buildings or communities due to the proposed community; that it is expected the proposed units will be second homes; that DelDOT stated there would be minimal impact and no Traffic Impact Study is required; that the road improvements are a minor extension as a hammerhead entrance; that the property is located in the MR Medium Residential Zoning District; that HR High Residential is located to the south and the west of the property; that MR Zoning is located to the north and east of the property; that they do not anticipate any effects on area waterways, as they will comply with the stormwater management requirements of the State and Sussex Conservation District; that according to the memo from Planning Staff the project is consistent with the 2018 Comprehensive Plan; that the same memo states the project could be considered as being consistent with the land use area, zoning and surrounding uses; that according to the Strategies for State Policies and Spending the property site is located in Level I, which is the highest priority for funding; that on October 27, 2021 the client held a public awareness meeting; that all residents within 200 feet were invited by certified registered mail; that approximately 30 letters were mailed out, including letters to Sea Colony Condominium Complex; that he has signatures for 13 neighbors, that the meeting was held at the Blue Water Ballroom in Bethany Beach Ocean Suites Residents Inn; that most of the current PowerPoint was presented at the meeting; that they have made some adjustments to one slide based off of comments made at the meeting; that based off of the comments provided they have reduced the density, increased fencing, supplemented and added to the buffer and trees from the area residents; that following the presentation neighbors voiced concerns regarding traffic, pedestrian traffic, density, proximity to the property line, fencing, trees, stormwater management, building height, condominium regime, ownership, parking and types of units; that they will be installing a shared use path across the frontage, which should increase the pedestrian travel way; that they can only change what is along their frontage; that they are unable to change anything not located on their property; that the current size of the property permits 11 units; that they have reduced the density to 10 units; that they increased the widths of the units to allow for additional parking; that by reducing the units they created better buffering; that originally they had proposed the proposed four to five foot fencing; that they are now proposing eight foot fencing; that they will keep all trees within the building restriction lines on both sides; that they will plant additional trees; that the current trees on the property are pretty mature; that a lot of the canopy begins at eight feet high; that they believe eight foot high fencing will create a nice buffer; that the building height is within the Sussex County regulation to building height, which is 42-ft.; that regarding the condominium regime, there all federal and state regulations and Sussex County requirements will be met for the condominium regime; that in the original plan there were three overflow parking spots located to the rear of the property; that the original plan proposed 22-ft. wide units, which offered less parking than what is currently proposed; that once they changed to 24-ft. wide units, they were able to create four parking spots per unit; that this created two times the required amount; that the units are three stories with optional fourth floor lofts and these are the same type units which were approved and currently being constructed in The Towns of Bayshore.

Mr. Mears stated all letters of opposition refer to a flooding issue and questioned if the proposed stormwater management will handle the flooding concerns with handling stormwater more efficiently than what neighbors are currently seeing on the property.

Mr. Sutton stated according to the current topography, most of the property site is not located within a flood plain; that the only portion of the property within the flood plain in the right rear corner; that the proposed construction would elevate the proposed units to be out of the flood plain and the stormwater

management will meet the regulations and more efficiently handle stormwater.

Ms. Wingate questioned if the existing units were one-bedroom units, how many units exist currently; that questioned if the existing vehicle traffic was one to two vehicles per unit; that she questioned the height of the Sea Colony units or other neighboring properties and confirmed the multi-use path would be placed along the frontage of the property.

Mr. Sutton stated the current units are one-bedroom; that there is currently 11 to 14 units; that each unit accounted for one to two vehicles; that the units in Sea Colony are two-story units and single-story units are around the property and he confirmed a multi-use path is proposed along the frontage of the property.

Ms. Stevenson questioned the maximum fence height required in Sussex County Code; that she questioned the size of the pool and questioned how many bedrooms per unit are proposed.

Mr. Whitehouse stated a maximum residential height of 7-ft. fencing is permitted on the side and rear of the property; that the maximum residential height in the front yard setback is 3.5-ft and what is currently being shown would require a variance.

Mr. Sutton stated the proposed pool size is 15' x 30'.

The Commission found that Mr. Rick Normoyle, General Sales Manager of the Christopher Companies, spoke on behalf of the Application, stating the units are three to four bedrooms, depending on the options the customer chooses.

Mr. Whitehouse stated Sussex County Code states townhomes should have an aggregate minimum yard of 40-ft.; that some of the units look a bit close to the fence; that he questioned if all the units meet the requirement and stated this can be worked out by staff in the site plan review stage.

Mr. Sutton stated some of the units are backed along the 10-ft. setbacks along the sides, with the larger units in the back; that they meet the 40-ft. setback in the front and they would have to run the calculations, and if adjustments are needed they do have room to make adjustments.

The Commission found that Mr. Dale Minner spoke in opposition to the Application; that he has owned a second property on Jefferson Bridge Rd. in Bethany Beach for the last 25 years; that Argyle Lane runs parallel to Kent Ave.; that his property is on the corner of Jefferson Bridge Rd. and Argyle Ln.; that he is concerned about heavy vehicular traffic on Jefferson Bridge Rd. due to its narrowness and its lack of a bicycle lane or shoulder; that motorist use this road to avoid Rt. 26; that he is concerned about the number of vehicles associated with the proposed Application; that he does understand the number of units has been reduced to 10 units; that he stated four-story buildings are proposed; that four bedrooms for each unit are proposed; that he is concerned about water runoff; that Bethany floods in the north and south; that there is a lot of ditching between Jefferson Bridge Rd. and Argyle Ln.; that Argyle Ln. is lower than Jefferson Bridge Rd.; that there are no other units in the adjacent area similar to the proposed four-story units; that the proposed units do not keep with the character of the area; that in Sea Colony the units are two-story condos; that he feels the proposed project will only exacerbate the issues which already exist; that he is concerned about the proposed lighting for parking and he feels, even with an 8-ft. fence, the light could still disrupt adjacent properties.

The Commission found that Mr. Nick Kypreos spoke in opposition to the Application; that he lives on Kent Ave.; that in the summer he is unable to leave his driveway; that at times he has had to wait 10 minutes to make a left from his driveway; that when he tries to quickly get out, there are pedestrians,

joggers, and bicyclist; that if he is trying to make a right, the traffic is often backed up from the traffic light passed his driveway; that the only way he leaves his driveway is if another driver lets him out; that he does not agree with the comments stating the proposed development will not have a traffic impact; that he currently lives in the traffic; that he is unsure if DeIDOT pulls their information for the whole year; that for the 10 weeks of summer, Kent Ave. is the only road that leads to Rt. 1, aside from Rt. 26; that on Saturdays in the summer, the traffic congestion backs up one mile to Muddy Neck Rd. and Double Bridges Rd.; that on Double Bridges Rd. and Camp Barns Rd. there has been development of Insight Homes, Woodland of Bethany, The Estuary by NV Homes; Jefferson Creek by Lennar and Schell Brothers; Brighton Homes; that currently in construction is Evergreene Homes and recently finished is the Ocean View Beach Club; that he states this is over a thousand homes which have access to Double Bridges Rd. and Kent Ave.; that the traffic all comes through and exit to Jefferson Bridge Rd.; that South Bethany is not accessible to Short Rd., Bayberry Rd., Errett Rd. and Bridge Rd.; that in the summer they block Black Gum Dr. and have a police officer present from 9:00 am until 5:00 pm to designate traffic; that further down there is a private road, which is monitored by security, not allowing traffic down the road; that all the traffic funnels to Jefferson Bridge Rd.; that the exit of Sea Colony is without a traffic light; that the proposed development's exit will be right across from the exit of Sea Colony; that DeIDOT placed traffic control strips on Jefferson Bridge Rd.; that when drivers are coming back from Rt. 1 to Jefferson Bridge Rd. to enter Kent Ave., the traffic is backed up to Rt. 1; that the turn lane on Rt. 1 fills up and drivers cannot stop on Rt. 1; that there is major congestion; that for these reasons he does not agree with the statement made by DeIDOT; that the addition of traffic from the development will cause major problems for residents; that when it rains, both ditches on both sides of the road flood; that the ditch on the east side of Kent Ave. floods back to Argyle Ln.; that the proposed retention pond is not going to remedy the current issue with the impervious ground the development is going to create; that the water will run off to adjacent properties; that there is a major flooding issue with Bethany; that adding the proposed type of development will not help the current issue; that Sea Colony is the only area where there are townhomes; that the townhomes were built in the 1970s; that there are no high-density buildings in the surrounding area; that the builder will come in, make their profit and leave; that he stated the current and future residents will be the ones left with the issues; that he requested the Planning & Zoning Commission look after the interest of the current residents by denying the approval for the proposed Application due to the traffic congestion, flooding and the negative precedence it sets.

The Commission found Mr. Thomas Fise spoke in opposition to the Application; that he and his wife have property within 500-ft. of the proposed property; that they have owned their property for the last 42 years; that for the first 10 years they owned property on Ocean Pines Ln. and now have a home on Argyle Ln.; that the maps presented were a bit disoriented as it did not show the Ellian's property; that his property is within 20-ft. of the boundary line of the subject property; that he did submit written comment for the record; that also submitted into the record is a petition signed by 30 property owners within the immediate community; that all of Argyle Ln. has a total of 13 single-family dwelling units over approximately 1/3-mile; that proposed is almost the same number of buildings on one acre as there is on Argyle Ln.; that he just learned the Applicant reduced the units from 11 to 10; that he also learned the Applicant has increased the number of parking spots from 44 to 45 spaces; that at peak season, his guess is, there are no more than 25 parked vehicles on the entire lane consisting of 13 properties; that it is a dramatic difference; that he feels the other speakers have underscored the traffic issues; that Sea Colony does have a security guard posted; that within the next year, it is Sea Colony's intention to have a security card system installed; that this will make it impossible for anyone coming along Kent Ave., from Double Bridge Rd., all the way to Jefferson Bridge Rd. to travel eastward until the arrive at Jefferson Bridge Rd.; that it will be completely blocked off; that there has been one pedestrian fatality on Jefferson Bridge Rd.; that he feels the traffic issues will only be exacerbated by Sea Colony's situation and the proposed development; that he has personal experience with the swales and the drainage issues; that he had a car, located 20-ft from the proposed development site; that during a storm the vehicle

sustained sufficient water damage, which was declared as a total loss; that this happened 20-ft. eastward of the proposed development; that the current proposal is pushing everything to the maximum; that he is not stating the property should never be developed; that the previous, 11 one-bedroom units were not, was small and not troublesome in any way; that proposed is 40 bedrooms; that with 42-ft. high units, only being 20-ft. away from adjacent units, causes a privacy issue; that he requested the Commission to deny the Application in its current form and proposed development is inconsistent with the current single-family dwelling nature and characteristics of the neighborhood.

Chairman Wheatley mentioned the road of Sea Colony is currently a private road and has always been intended to be a private road to be used for the property it serves; that the height of 42-ft. for buildings is permitted in Sussex County Code within the MR Medium Residential Zoning District and would not be a basis for denying the Application.

The Commission found that Ms. Jan Seilhamer spoke in opposition to the Application; that she is representing her husband, Mr. Levon Ellian and her mother-in-law, Ms. Sue Ellian; that they own the property behind the proposed property; that they are completely opposed to the overdevelopment of the proposed property; that she realizes the property will be developed at some point, but they support smart development not overdevelopment; that just because you can place 11 units, 42-ft. high on the property, does not mean that you should; that if the developer would like their support, she would suggest building something which fits the esthetic of the surrounding neighborhood; that her family has had their home for 41 years; that they have seen a lot of change take place in those 41 years; that a building towering 42-ft. overtop of their home, at 20-ft. away, is a bit much; that she feels the property owners on the opposite side would feel the same as they do; that during peak season, the vehicular traffic will most likely be doubled from the 50 trips stated by DelDOT; that it is treacherous trying to exit Argyle Ln. as it is with all of the beach traffic being pushed their way; that the proposed development will cause increased traffic coming from Kent Ave.; that she has not seen a traffic impact study of traffic during peak season on Kent Ave.; that she requested smart development, that Bethany Beach has always been a quaint, beautiful beach town; that she would like to see Bethany Beach remain that way; that she would request the construction of a few homes, rather than units which do not fit into the neighborhood; that she is concerned about lighting and noise pollution and she requested the Commission deny the Application.

The Commission found that Mr. Steve Sitton spoke in opposition; that he has lived on Ocean Pines Lane for the last 60 years; that he has seen the development of Bethany Beach; that the infrastructure is the same as it was in 1966; that the road sizes is the same, there are no sidewalks, and is very dangerous; that the traffic this past summer was unbelievable; that it is faster to walk anywhere than to try to drive out of Ocean Pines Ln.; that one street east of Argyle, one could spend 10 minutes attempting to get out; that getting back in is impossible unless another driver lets you in; that at one time he had to park his car on Jefferson Bridge Rd. and walk to his house; that the traffic issue is a major concern for him; that it seems the buildings have outstripped the infrastructure; that this has led to increased danger when walking at night due to there being no sidewalks; that he would like to see the sidewalk issue addressed before he would like to see 11 condo units developed; that east of the proposed property, the only drainage management they have are ditches that were constructed in the 1900's; that these ditches have been built upon and backed up; that the neighbors have gone around the neighborhood and cleaned the ditches out; that he spent \$34,000 the past year in flood control, including swales; that this was a result of Evergreene Companies building homes across the street from his property; that this put him under water; that he never had the issue prior to the homes being built; that any runoff from Argyle is going to run to his property and other speakers have covered the other topics concern for him.

The Commission found that Mr. Andy Beck spoke in opposition to the Application, that he lives on

Ocean Pines Lane; that he currently owns several vacant lots on Ocean Pines Lane; that he did send in a letter for the record, prior to the public hearing; that his eight points of objection were listed in the letter; that he has been in the building business since 1975 and understands the building process; that he finds it difficult to assume the Applicant will be able to keep any trees on the property, proposing building so close to the setback at 42-ft in height; that this will require all the trees to come down; that any trees they bring in to replant, will do nothing to buffer from the 42-ft. buildings they are proposing to place; that he is a firm believer in private property rights; that he feels if the builder wants to do what is in the current constraints, he does not feel anyone can object to it; that what the Applicant is asking for is a special Conditional Use; that the request affects all neighbors who have spent most of their lives in the neighborhood; that he request denial of the Application with a request the developer come back with an Application within the Ordinances; that the traffic situation is horrible; that he has substantial holdings at the end of Ocean Pines Lane; that there is a primary ditch which drains all the area; that he believes the subject area will also drain into the same ditch and then into the Swan Pond at Sea Colony and from there flow into the Assawoman Canal; that over the last six to seven years, he has received multiple letters from Sussex Conservation District requesting to come onto his property to survey the ditch to improve the drainage; that despite this nothing has been done in regards to the drainage; that his wife has mentioned the drainage issue; that there is a small 10-ft lane to the east of Ocean Pines Lane; that this lane was filled by a developer about 20 years ago; that there is 12 to 13 lots serviced by the 10-ft wide Louise Lane; that this lane is so narrow trash trucks cannot get down the lane; that an ambulance would not get down the lane; that in the last 18-months Evergreene Homes has built seven homes; that these homes are 3.5-stories at 42-ft. tall, setback on setback; that five of them are on the 10-ft. wide lane; that two of the homes are on Ocean Pines Lane; that four of the homes are currently under construction; that this construction has made a muddy mess of Ocean Pines Lane; that the proposed development is pushing development of most of the buildable envelope; that it is overbuilding to the max; that most of the villas within Sea Colony area single-story villas and the proposed development does not stay in character with the surrounding homes.

The Commission found that Mr. Arseny Bogomolov and Mr. Tom Gugerty spoke by teleconference with concerns regarding traffic, pedestrian safety, drainage and flooding, and privacy issues.

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 2279 Ron Sutton. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U 2282 Lawrence Davies

An Ordinance to grant a Conditional Use of land in a C-1 General Commercial District for a microbrewery to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.35 acres, more or less. The property is lying on the southeast corner of the intersection of Cedar Neck Road (S.C.R. 357) and Hickman Road (S.C.R. 359). 911 Address: 38450 Hickman Road, Ocean View. Tax Parcel: 134-9.00-27.00

Mr. Whitehouse advised the Commission submitted into the record is a copy of the Applicant's site plans, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's exhibit booklet including photos and proposed conditions of approval, three letters of approval, two letters of support submitted by the Applicant, zero letters of opposition and one mail return.

The Commission found that Ms. Mackenzie Peet, Esq. spoke on behalf of the Applicant, Bethany Bay

Brewing Company, LLC; that also present are Mr. Steve Spence, Co-Council, Mr. Pete Backus and Larry Davies who are members of the LLC; that the Applicant is requesting a Conditional Use of land in a C-1 General Commercial district for a microbrewery at the southeast corner of the intersection of Cedar Neck Rd. and Hickman Rd.; that the Applicant's submission included Sussex County's Conditional Use Application, DelDOT's Service Level Evaluation Response which made the determination the proposed use impact is insignificant and no TIS Traffic Impact Study is required, property and deed information confirming the property is presently owned by Jackk, LLC; that Bethany Bay Company, LLC present rents space from Jakk, LLC; that also included in the submission is a copy of preliminary site plan and interior plans, copies of relevant sections of the Zoning Code, ariel images of the property showing nearby commercial uses, which include nine other Conditional Uses within a one mile radius of the property, street front images, a zoning district map confirming presence of adjacent properties zoned, copies of two notices of violation issued for failure to obtain a conditional use for a microbrewery on the property and failure to obtain a building permit for interior remodel; two letters of support in addition to the other letters submitted in support and proposed conditions of approval; that on August 25, 2021 her clients received two notices of violation after letters were received on August 24, 2021; that her clients were surprised to receive the notices of violation as they were under the impression, based off previous conversations with various agencies, including Building & Licensing and Sussex County Engineering, that a permit was required due to no new building structure being involved to renovate the interior of the existing building; that the existing building previously operated as an Italian restaurant; that after review of the Sussex County Permitting requirements and emails with agency representatives involved in the permitting of a microbrewery, her clients recognized their misinterpretation of the requirement to receive a building permit for the interior renovations performed; that upon the receipt of the violations, all work immediately ceased; that her clients immediately contacted Sussex County to receive a building permit, to learn that such permits could only be issued after approval of a Conditional Use; that there are present holds on the permits subject to the outcome of the current Conditional Use request; that despite her client submitting their Conditional Use Application on April 23, 2021, they received a second notice of violation for failure to obtain a Conditional Use; that her client's oversight was inconsistent with all other efforts to meet other County and State microbrewery regulatory and permitting requirements; that the issue is a result to incomplete advice received; that her client request the approval of a Conditional Use in effort to remedy the violation of record and open their business subject to any other necessary requirements; that should the Conditional Use be approved the Applicant's will seek building permits from Sussex County Building & Licensing; that reflecting on this experience her clients acknowledge the fact they should have consulted with professionals, including legal council who would be knowledgeable of Sussex County zoning and building requirements despite their best intentions to comply with all requirements; that Section 115-179 of Sussex County Code requires a Conditional Use for business and commercial uses; that her clients are before the Commission to request a Conditional Use to operate a microbrewery; that the property is located within the C-1 General Commercial District; that properties to the south and east are in the MR Medium Residential Zoning District; that the immediate property to the south and across Hickman Rd. are zoned C-1; that there are nine approved Conditional Uses operating within a one mile radius of the property; that nearby businesses include a restaurant across the street, a small strip mall adjacent to the property which includes a seafood takeout business, liquor store, laundry mat and two vacant spaces; that one of the vacant spaces is anticipated to be another take out eatery; that the site previously operated as an Italian restaurant, where alcohol was served; that the proposed use will include the microbrewery, a tasting room, indoor seating and outdoor patio seating are; that no food will be served at the site, however patrons will be permitted to bring food into the microbrewery, ordered from nearby takeout eateries; that the building the proposed microbrewery is located on is located on a larger parcel and an existing 2,773 sq. ft. building; that access to the property exist off Hickman Rd.; that there are 20 existing parking spaces on existing paved and gravel parking areas, as shown on the site plan; that the Applicant is in the process of determining the number of parking spaces required based on the

patrons space to be compliant with Sussex County parking requirements, which requires one parking space for every 50 sq. ft. assigned for patron use; that also required is one parking space per two employees; that there is room for additional parking spaces to the south and east of the building if the gravel area is expanded; that approximately 70% will be occupied by patrons, with 30% of the building spaced for business operations and equipment; that the patio is approximately 1,200 sq. ft., fenced in on three sides with the exterior building wall serving as the fourth side enclosing the patio; that the Applicant plans to place six picnic tables on the outdoor patio area to accommodate a maximum of 36 patrons; that there will also be additional seating located around a fire pit where a cornhole game will be set up; that there will be no live music outside; that the Applicant anticipates being open from 11:00 am until 10:00 pm at latest, and to be adjusted seasonally; that the Applicant plans to hire four to five full-time employees year round, which will adjust seasonally as needed; that the Applicant is interested in installing a sign compliant with Sussex County's standards; that for all reasons stated the proposed use is compatible with surrounding uses and is consistent with the character of zoning district and the Applicant requests the Commission's favorable consideration of their Application.

Mr. Mears questioned if there will be live music on the inside and when would the live music stop.

Ms. Peet stated there could possibly be live music inside and live music would stop at 10:00 pm at the latest.

Ms. Wingate questioned if what is proposed will be placed in the original footprint of the existing building.

Ms. Peet confirmed everything proposed is being placed within the original footprint of the pre-existing Italian restaurant.

Mr. Robertson stated since the proposed property is located within C-1, the Applicant is by right entitled to signs permitted within the C-1 District unlike the majority of the Conditional Use Applications they see.

Chairman Wheatley stated it is a common misconception that anything is permitted in C-1 Zoning and even some State agencies are under this impression.

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 2282 Lawrence Davies. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1940 Community Bank Delaware c/o Stephen W. Spence

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.76 acres, more or less. The property is lying on the southwest corner of the intersection of Indian Mission Road (Rt. 5) and John J. Williams Highway (Rt. 24). 911 Address: 31816 & 24882 Indian Mission Road, Millsboro. Tax Parcel: 234-23.00-262.00.

Mr. Whitehouse advised the Commission submitted into the record a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's exhibit booklet, a copy of the Applicant's site plan, a copy of the staff analysis, a letter from the Sussex County Engineering Department Utility Planning Division, zero comments, and zero mail returns.

The Commission found Ms. Mackenzie Peet, Esq. spoke on behalf of the Applicant, Community Bank Delaware; that also present was Mr. Steven Spence and Mr. John Snow, both Member of Directors of Community Bank Delaware, Mr. Alan Decktor with PENNONI and Mr. Doug Warner, architect; that Mr. Alexander Pires, CEO and Mr. Jack Riddle, President of Community Bank Delaware wished to be present, but could not attend due to personal and family illness issues; that the Applicant is proposing to rezone .76-acre parcel located on the southwest corner of the intersection of Rt. 24 and Rt. 5 from AR-1 Agricultural Residential to C-2 Medium Commercial; that the Applicant's submission included their Land Use Application, DelDOT's Service Level Evaluation Response recommending a TIS Traffic Impact Study or the alternative of a area wide study fee of \$10 per daily trip in lieu of performing a TIS; Sussex County Engineering Department Utility Planning Division & Design Review comments, a boundary plat and legal description, conceptual site plan; that should the property be rezoned to allow for development of a future bank or similar use intend to comply with Sussex County setbacks required for C-2 and applicable parking requirements; that the site plan shows access to the property off of Rt. 5; that the Applicant had a project coordination meeting with DelDOT where they were directed to acquire the owner of the adjacent shopping center to obtain access through the nearby shopping center; that the Applicant has contacted the owner of the shopping center and currently engaged in discussions with them; that if the discussions are not successful the Applicant will circle back with DelDOT; that Tidewater Utilities Will Serve letter is also included; that the Sussex County Sewer District map confirms the properties location in Tier I; that ariel images of the site, the County Zoning District map and Future Land Use Map are included; that the property is an AR-1 zoned property in a sea of commercially zoned properties; that also included is the 2020 State Strategies & Investment Level map which identify the property as being within Level I and Level II; that currently Ms. Sandy Trantino Norwood is the record owner of the property; that Community Bank Delaware is the equitable owner of the property having entered into a contract to purchase the property; that the Applicant's reason for rezoning the property from AR-1 to C-2 is to develop a future branch office, or a similarly permitted use in C-2, at the proposed location; that the only request is to rezone the property from AR-1 to C-2; that the Applicant does understand the property will have to proceed through site plan approval should the rezoning be approved; that currently the property consist of a dwelling in poor condition, overgrown vegetation and a small cemetery; should the rezoning be recommended for approval by the Commission and County Council, the existing home will be demolished, landscaping will be cleared soon after the bank acquires the property and the small cemetery will be maintained; that the rezoning from AR-1 to C-2 is consistent with Sussex County's Comprehensive Plan and Future Land Use Map; that rezoning will not diminish or impair property values in the surrounding neighborhood, will not create a public nuisance, and will not result in an increase of public expenditures; that there are no wetlands located on the property; that the property is located within Flood Zone X; that any sensitive historical features present onsite, including the cemetery, will not be impacted by construction or future use; that stormwater will be provided onsite in accordance with State of Delaware regulations; that the property is not located within the Groundwater Protection Zone; that the property will be served by public water and sewer service; that the Future Land Use Map designates the property within the Coastal Area and Commercial Area; that all properties to the south have the same land use designation; with all properties surrounding the site having the designation as Coastal Area; that retail and office uses are appropriate in the area, including large shopping centers and office parks confined to selected locations with access along arterial roads; that retail service and mixed uses located along arterial roads and highways, like Rt. 24, are also considered appropriate uses in the commercial area; that Table 4.5-2 for Zoning Districts applicable to Future Land Use categories designates C-2 as an applicable zoning district in the Coastal Area; that the purpose of the C-2 District is to support

uses which include retail sales and performance consumer services; that the proposed district permits a variety of retail, professional and services businesses; that rezoning of the property to C-2 is also in character with similarly zone properties adjacent to and with the vicinity of the site; that the current AR-1 property is in a sea of commercially zoned properties, with the adjacent parcel to the north being zoned C-2; that the adjacent property to the south has split zoning of C-1 and CR-1; that the proposed site is located with the immediate vicinity of other properties located in C-1, CR-1 and B-1 Zoning Districts; that Pennoni did prepare a PowerPoint slide which identified the number of medium to large scale commercial uses adjacent to, and within the vicinity of the proposed site; that these commercial uses include Wawa, Rite Aid, Giant and healthcare facilities; that for all the reasons stated the proposed rezoning of the property from AR-1 to C-2 is consistent with the Comprehensive Plan and Future Land Use Map; that the site is appropriately located at the intersection of Rt. 24 and Rt. 5; that the site is located within the vicinity of other commercially zoned properties where a general mixture of commercial and service activities presently exist; that this promotes the general convenience, orderly growth, prosperity, and welfare of the County; that the Applicant requests the Commissions favorable consideration.

Ms. Wingate questioned the location of the cemetery on the proposed site.

Mr. Steven Spence located the cemetery on the map for the Commission.

Mr. Robertson stated he appreciated the information regarding the cemetery but mentioned the cemetery does not play a role in the decision regarding the rezoning of the property and it will be reviewed on the site plan.

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

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

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

In relation to Application C/Z 1940 Community Bank Delaware c/o Stephen W. Spence. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1944 Executive Lawn Management Property, LLC (c/o John Huss)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 3.68 acres, more or less. The property is lying on the north side of Lewes Georgetown Highway (Route 9) approximately 0.55 mile west of Prettyman Road (S.C.R. 254). 911 Address: 25141 Lewes Georgetown Highway, Georgetown. Tax Parcel: 235-30.00-6.20.

Mr. Whitehouse advised the Commission submitted into the record is a copy of the Applicant's exhibit booklet, a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's site plan, a copy of Ordinance 2521 from September 26, 2017, comment from Sussex County Engineering Department Utility Planning Division; a copy of minutes from the Planning & Zoning meeting of October 1, 2019, zero comments and zero mail returns.

The Commission found Ms. Mackenzie Peet, Esq. spoke on behalf of the Applicant, Executive Lawn Management Property, LLC; that also present is Mr. Jay Huss; that the Applicant requests a change of zone

from AR-1 Agricultural Residential to C-2 Medium Commercial District; that Executive Lawns is a family-run business; that Executive Lawns has seen steady growth since formation in 2006; that Executive Lawns purchased the property in 2017 after recognizing their need for more space than their former site; that shortly after the purchase of the property, the Applicant pursued a Conditional Use; that Ordinance 2521 granted a Conditional Use of land for Executive Lawns to operate its landscaping business with equipment storage; that currently the only request is for rezoning of the property; that the property presently operates as a landscape business with equipment storage permitted by a Conditional Use, Ordinance 2521; that the Conditional Use was granted on September 26, 2017; that on October 1, 2021 the Applicant, through council Glenn Mandalas, requested clarification on Conditions of Approval for the Conditional Use; that minutes from the meeting are included; that the minutes from the meeting confirm the Applicant requested clarification of Condition A which required the use to be limited to a landscaping business with equipment storage and prohibited retail sales to be conducted onsite; that in supporting material submitted to the County requesting clarification of Condition A the Applicant stated that in addition to a landscape business, he would like to acquire stock of plants, off premise, to be kept, maintained, nurtured, treated and possibly repotted on premise with mature plants; that these plants will eventually be used in connection with the lawncare and landscaping business and sold to the public from the premise; that in addressing the request, the Commission had to address if the additional business specific activity fell under the definition of a nursery; that council suggested Conditions of Approval for a Conditional Use cannot be prohibited for an otherwise permitted use in AR-1; that ultimately the Commission confirmed the Applicant could have a nursery onsite as a permitted use on the site, as long as there was an agricultural step in the process of growing some of the plants to be sold; that this could include the growing of plants from seed or making the brought onsite larger; that the Commission concluded acquiring stocks of plants, off premise, to be kept and maintained, nurtured, treated and possibly repotted on the premise and eventually using the mature plants in connection with the Applicant's lawn and landscape business, or sold to the public did fall within the definition of a nursery; that this therefore was a permitted activity; that during the Commission's deliberation in coming to the conclusion Mr. Robertson confirmed there was a prohibition on certain types of retail sales not permitted through the underline AR-1 District; that such activity include the sale of material and resemble a use more like a garden center; that Mr. Huss understands the Conditional Use limited his ability to engage in wholesale retail activity; that the Applicant is interested in developing the site to operate a garden center at the property, which would include wholesale retail activity; that rather than expanding on a use which is otherwise not permitted and without the authority to do so the Applicant request to rezone the property to Medium Commercial density in hopes of expanding his business; that his business has experienced steady growth since 2006; that the Applicant considers the growth to be rapid within the past two years in response to Sussex County's residential development and growing population; that the rezoning of the property from AR-1 to C-2 is consistent with the Comprehensive Plan and Future Land Use Map; that it is located in an ideal location to be further developed which will support types of business which include C-2 related permitted uses; that the property is designated as a low density area where C-2 Medium Commercial District is an applicable zoning district as of 2018 all lands designated as low density within AR-1; that Section 4.4.3 of the CDP Comprehensive Development Plan details the permitted uses envisioned in a low density area; that these uses include agricultural, residential and development which is largely confined to businesses addressing the needs of agricultural and residential uses; that the Future Land Use Map suggest that Rt. 9 will continue to develop commercially, with some parcels developing industrially; that the Applicant's business supports and serves residential uses by providing services to Sussex County homeowners and developers consistent with the Comprehensive Plan; that with increased development in the vicinity of Rt. 9 there will be an increase demand for residential services, such as those provided by the Applicant; that the C-2 District is purposed on supporting uses which include retail sales, performance of consumer services and permits a variety of retail and professional business; that C-2 Districts are primarily located near arterial and collector streets; that wholesale retail nurseries for sale of products is permitted for retail establishment which are less than 75,000 sq. ft.; that the Comprehensive Plan confirms that commercial uses may be appropriate in low density areas depending on surrounding

uses; the property is located between commercially zoned properties, a couple miles west of the intersection of Rt.5 and Rt. 9; that there are commercially zoned properties located to the east at the intersection of Rt. 30 and Rt. 9; that properties located at the intersections are zoned C-1, CR-1, MR and HI-1; that properties located in all directions are zoned AR-1 with residential and agricultural uses in which the Applicant's business could serve; that such uses include Royal Farms and Besche Furniture; that there have been six Change of Zone Applications within a .5-mile radius of the property; that approved Applications were included in the memorandum submitted within the packet; that the meeting minutes suggested the one denial of Change of Zone Application, C/Z 1868, was due to an insufficient record; that the proposed rezoning is compatible with the surrounding community; that the rezoning will not have a negative impact on land adjacent to the property and properties located in the vicinity of the site; that the site is an appropriate location on a commercializing Rt. 9 and will support C-2 uses, which can serve nearby residential uses; that for all the reasons stated the proposed rezoning of the property from AR-1 to C-2 is consistent with the Comprehensive Plan and Future Land Use Map and it is appropriately located along Rt. 9 within the vicinity of commercial businesses, residential and other business uses.

Ms. Stevenson questioned if it is permitted to use Old Woods Drive.

Mr. Robertson stated it was part of the previous Conditions of Approval; that Old Woods Drive is closed off; that it was due to questions regarding who had rights to use the drive and he believes there was a uniform agreement from the neighborhood to close off Old Woods Drive.

Mr. Hopkins requested confirmation that the proposed business performed at the front of the property is not permitted under the current Conditional Use.; that he was shocked the Applicant did not request commercial zoning from the start; that the proposed use sounds like it would accommodate the nearby developments and the downside is if the rezoning is approved, should the Applicant ever sell a future buyer could develop anything permitted within commercial zoning.

Ms. Peet stated it currently is not a permitted use under the current Conditional Use; that the wholesale retail activity is what exceeds the current conditions; that there can be a lot of hesitancy with rezoning a property; that the Applicant first wanted to see how the business would do; that the business has done very well at the current site; that the Applicant is looking to now expand and states in their opinion C-2 is a more limited commercial use district.

The Commission found Mr. John Lingo spoke in support of the Application; that he owns the property adjacent to the Applicant; that Mr. Huss has been a good neighbor; that they have had no disputes or disagreements regarding their common property line; that he has attended other public hearings regarding other properties adjacent to his, specifically Hawthorne Development by Insight Homes; that he found the information presented at the public hearing did not reflect what was carried out in practice; that he questions if the Applicant is requesting any modifications or exceptions to existing Code requirements; that he questioned if the Application is approved, who he or any concerned party be notified of any other subsequent modifications or exceptions which may be granted by other agencies and stated he remains in support of the Change of Zone.

Chairman Wheatley requested Mr. Lingo refrain from his comment regarding the Hawthorne Development and provide comment only for the subject property for C/Z 1944 Executive Lawn Management Property, LLC.

Mr. Robertson stated the Applicant is requesting a Change of Zone to C-2 District; that if the Applicant would like to change any uses or structures on the site, the Applicant will be required to have site plan approval; that if the Applicant is required to have site plan approval, they will be posted on the agenda to

be acted on by the Commission; that if the Applicant requested a variance or things of that nature, they will be required to go before the Board of Adjustment and adjacent properties would receive notice of those public hearings.

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

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

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

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

In relation to Application C/Z 1944 Executive Lawn Management Property, LLC (c/o John Huss). Motion by Mr. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1948 The Grande at Canal Point Maintenance Corporation

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 Number 15 of C/Z 1538 (Ordinance No. 1700) and C/Z 1926 (Ordinance No. 2786) in relation to piers, docks, boat ramps and other water-related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less. The property is lying on the east side of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road (S.C.R. 271). 911 Address: N/A. Tax Parcel: 334-13.00-334.00, 1448.00-1750.00.

Mr. Whitehouse stated submitted into the record a copy of the Applicant's exhibit booklet, a letter received from the Applicant, a copy of a letter requesting the reconsideration of C/Z 1926, a copy of C/Z 1538, a copy of comments from Sussex County Engineering Department Utility Planning Division, a copy of the Notice of Decision for C/Z 1926, 67 letters of support, one letter in opposition and eight mail returns.

The Commission found that Mr. Tim Willard, Esq. spoke on behalf of the Application C/Z 1948 The Grande at Canal Point Maintenance Corporation; that also present were Applicants Ms. Melissa Donnelly and Mr. Ken Larson; that Applicant is requesting to have the previous Conditions of Approval amended to be permitted to build their proposed dock; that previously the Commission issued recommended approvals with a sound Condition; that he previously represented the Applicant for the previous County Council public hearing; that at that hearing County Council did approve the Application, but not in a way they previously have in accepting the Planning & Zoning recommendations; that County Council added a Condition (Paragraph F), that in the Condition the Council gave Conditions for construction of the dock; that Mr. Ed Launay stated based off the Conditions for construction of the dock, it would not be approved by DNREC and The Army Corp of Engineers based on the dimensions; that the recommendation from Planning & Zoning stated the approval was subject to all applicable permits from The Army Corp of Engineers, DNREC and any other agencies having jurisdiction; that these agencies have the jurisdiction over navigable waterways; that he stated Chairman Wheatley mentioned, at the previous public hearing, people have access to the waterway, but it is unsafe in the manner they are accessing it; that after the County Council's decision he wrote a letter requesting reconsideration of the Condition; that the Applicant then re-

applied; that he stated this is not re-application as the Ordinance 2786 has already passed; that the only way the Applicant could get back to Commission was to re-apply; that the Applicant is currently applying to amend Ordinance 2786; that the current Application request is the deletion of Paragraph F; that a dock was already approved by the Planning & Zoning Commission, as well as County Council for the use of kayaks and canoes; that he just received Mr. Spence's letter of opposition that day; that there are 67 letters supporting the Application request; that the current subdivision is constructed of single-family homes; that there is nothing within the Homeowner Association covenants forbidding a dock; that the HOA owns the subject parcel; that the parcel is referred to as the Park Area; that the HOA took a vote; that there were 163 votes in favor out of 180 people voting; that this equals to 90% of votes being in favor for the Application request; that the Comprehensive Plan encourages access and boating recreation; that within Ordinance 2786 are indications for all of the reasons the amendment request should be added; that in Mr. Spence's opposition letter it mentions what was permitted when the subdivision was originally approved, questioning why the laws should be changed; that he states things have changed; that at the time the subdivision was approved it was only the developer; that within the previous meeting minutes there was note of opposition; that now there are 150 residents living there, requesting to recreate; that in the opposition letter it references Rule 15.5 where it is stated only in extraordinary cases should reconsideration be permitted; that the Applicant does not consider the request as a reconsideration; that the request is to amend the Ordinance; that in the opposition letter it references the Statue 216 D, which states reconsideration is not permitted until one year has passed; that this is only subject to Applications which have been denied; that the Applicant is requesting to amend the Ordinance; that in the opposition letter it stated they opposition would be in support of the previously designed dimensions supplied by Mr. Robert Whitford of Precision Marine; that since the Applicant began this process, it has been found there is a slither of land which comes out toward the public area; that due to this, the dock would be required to move slightly north; that due to this the previously designed dimension will not be approved; that if Commission would approve the dock, without dictation to the structure of it, The Army Corp of Engineers and DNREC will designed the dock; that it will then be required to come back to the Commission for final site plan approval; that this is similar to how the Commission would not try to construct an entrance to a subdivision; that DNREC and The Army Corp of Engineers has jurisdiction over navigable waterways; that he has prepared options for removing Paragraph F; that one option would be to delete the whole paragraph and re-recommend the previous Conditions; that this Condition stated approval would be subject to the receipt of all applicable permits from The US Army Corp of Engineers, DNREC and any other agency having jurisdiction; the Condition also stated the RPC was permitted for only one dock, for the use of residents and only being used to kayaks and canoes; that another option is to delete Paragraph 15 in its entirety; that he does not recommend this option as he believes it may open up the permitted use of motorized marine vehicles; that another option would be to delete Paragraph 15 F; that this deletion would remove only the portion which dictates the construction of the dock; that submitted into the record was the letter of reconsideration and a draft from Mr. Ed Launay regarding tract conditions; that the Applicant has no objection to any of the other Conditions proposed in Ordinance 2786 and the Applicant only request amending Paragraph F, allowing the Applicant to proceed with regulatory approval.

Ms. Stevenson questioned if electricity will be required if a gate with a fob pass will be present.

Mr. Hopkins questioned if the Applicant was opposed to having lighting in the park; that he questioned if the concern was if the lighting would be intrusive to the environment if conduit was run to the park and questioned if the lighting would be favored from a safety standpoint.

Mr. Willard stated in Paragraph E of the Conditions stated there shall be no bathrooms, running water, electricity, lighting, or parking; that in Mr. Ed Launay's previous letter to County Council he deleted this

section of the paragraph because of the same reason Ms. Stevenson was asking; that the Applicant chose to not upset any of the other Conditions set by Council; that if this was a Condition the Commission would like to change the Applicant would not oppose it; that the Applicant proposed the fob be up near the street, not directly in the park; that this was a subject objectional to the Applicant, but chose not to request, due to the main concern being the proposed dock; that the Applicant was not going to challenge the Condition, but would like to see some low lighting in the park for security reasons.

Chairman Wheatley stated the issue is lighting for safety purposes; that Commission does have the ability to stipulate the lighting; that he understands lighting could be a concern from the residents across the canal and this is a subject the Commission would have to be very careful about.

The Commission found Mr. Steven Spence spoke in opposition to the Application; that he presented previously with the prior disputes over the original Application; that Ms. Mackenzie Peet represent the original Application to the Planning & Zoning Commission and Mr. John Paradee represented the original Application in front of County Council; that he did submit a letter of opposition; that there were many drafts of the letter before submission; that the question was whether to stick solely with the procedural issues they have raised concerning Applicant's requesting to remove a Condition based upon their inability to perform what they want; that battlelines were drawn regarding whether boating should be permitted at all based off the previous Condition from 2004; that if a dock should be placed, it would be for unmotorized vehicles only; that the dock proposed to the County Council was much larger than needed; that when County Council adopted the Ordinance, which is not the subject of the current Application, some Conditions were proposed to the size and shape of the dock; that the Applicant originally came in requesting a deletion of a Condition; that the Applicant received changes to the Condition, which were not the changes the Applicant asked for; that there has been a lot of questions between Councils as to what type of Application is it considered to be; that it is his view the original Application was not granted; that the Applicant received a modification to a Condition after applying to delete the Condition all together; that the Applicant did not like the Conditions proposed; that there is no evidence in the record showing the Applicant applied the proposed dimensions to The Army Corp of Engineers or DNREC, were denied and told in writing by those agencies what was required to change; that he has read Mr. Ed Launay's letter; that he does not understand what the letter is stating other than he proposed to build the dock the way it was proposed before; that the previously proposed dock was not permitted by County Council; that he feels the Applicant is requesting the Commission reconsider something within the same year; that he feels this should not be allowed; that the Applicant should have to contact DNREC and The Army Corp of Engineers, providing a design which is compliant, have those agencies comment and then return to Commission; that he asked an independent party to design a dock which complied with the Conditions; that the only issue from the independent party design was the distance from the landward side, out into the canal; that there was difficulty, without any other evidence, determining if the dock as Conditioned by County Council would be long enough to provide the depth necessary at low tide to launch a kayak or a canoe; that he does not want persons other than members of the community to be able to use the facility; that the wanted to area to be secure; that electricity may or may not be required; that this was an issue which was not completely addressed; that in the record there is a reconsideration tract document which presents a cross out for electricity; that he is uncertain who submitted the document; that he does not want to see overhead lighting or lighting at 11:00 pm; that he does not want after dark use of the canal; that the County Council imposed conditions; that the Applicant did not like them; that the Applicant did not apply for permits; that he opposes the procedural process first; that he feels the Applicant should have to wait or be required to obtain evidence to what will work and not work; that he does not want to see the dock size originally presented; that it is too big and beyond what is necessary for the proposed limitations; that where the Applicant originally appeared to want to place the dock would cross

over the property line onto Canal Corkran property; that this is one of the problems which must be resolved; that to the right of the proposed site is wetlands; that there is only so much room for what can go into the area; that he feels the Commission should express no position or recommend against any change; that they are concerned with the size, volume of use and timing of use he feels the Applicant should be going through the design phase first before requesting any change.

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

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

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

In relation to Application C/Z 1948 The Grande at Canal Point Maintenance Corporation. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Whitehouse stated C/Z 1948 The Grande at Canal Point Maintenance Corporation will be heard by County Council as currently advertised on January 25, 2022; that to allow further time for the Commission to consider before the January 13, 2022 meeting, the Applications for C/Z 1944, C/Z 1940, C/U 2279 and C/U 2282, have been re-noticed and re-scheduled to be heard by County Council on February 1, 2022, to allow Commission to take action on those Applications at the January 13, 2022 meeting.

Mr. Robinson stated this is due to having two meetings in a row.

Mr. Whitehouse stated to better assist with having all five Commission members present, he suggested moving the meeting date of February 24, 2022, to February 17, 2022, and questioned if this suited the Commission.

The Commission unanimously agreed to change the meeting date from February 24, 2022, to February 17, 2022.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to move into executive session. Motion carried 5-0.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to move out of executive session. Motion carried 5-0.

Mr. Robertson stated the Commission discussed potential litigation and no action was required to be taken.

The Commission discussed a future field trip with the Planning & Zoning Commission and County Council.

Meeting adjourned at 8:25 p.m.

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