

## **THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 10, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 10, 2022, 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. Lauren DeVore– Planner III, Mr. Chase Phillips – Planner II, and Ms. Ashley Paugh – Recording Secretary.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of January 27, 2022, Planning and Zoning Commission meetings as revised. Motion carried 5 – 0

### **OTHER BUSINESS**

#### **(S-21-38) All Climate Storage of Millsboro**

##### **Preliminary Site Plan**

This is a Preliminary Site Plan for the establishment of a self-storage facility to include fifteen (15) buildings of non-climate-controlled storage space that totals 30,000 square feet and one (1) 62,900 square foot building of climate-controlled storage is also proposed. Staff note that 400 square feet of the climate-controlled building will be used as office space. The parcel is 6.17 acres and is located on the northeast side of Dupont Boulevard (Rt. 113), in the Combined Highway Corridor Overlay Zoning District (CHCOZ). The applicant requests a waiver from the transit and pedestrian accommodations that are required by the overlay district under section § 115-194.1(G) of the Code. The applicant also requests a waiver from the interconnectivity requirement established in section §115-220(B)(16). The applicant seeks these waivers due to the facility being secured and fenced self-storage. Zoning: C-1 (General Commercial District) and AR-1 (Agricultural Residential District). Tax Parcel: 233-5.00-153.00. Staff are awaiting agency approvals.

Mr. Phillips stated the Application may require comments from PLUS and he requests final approvals be contingent upon the PLUS comments.

Ms. Stevenson questioned why interconnectivity was not placed along the front of the building and the location of fencing for the secured facility.

Mr. Phillips stated the fencing is not shown on the proposed site plan and is required to be shown on the final site plan.

Mr. Kevin Minnich, with Minnich Engineering, spoke on behalf of the Application; that on the site plan, the fencing begins at the left side of the building, where it is labeled “Dock”; that the fencing then runs to the first building, the back of the first building will serve as the fence with the rest of the facility being fenced in; that vehicles will enter and stop at the area in front of the office; that drivers will be required to enter a code to allow access into the fenced-in facilities and he is uncertain how to obtain interconnectivity between those points.

Ms. Stevenson stated she would like to see interconnectivity, at the front of the facility, as a way to access the property next door; that she understands no one can currently force the adjacent property owner to agree to the interconnectivity; that she feels interconnectivity could be a need in the future; that she desires interconnectivity for safety reasons and future growth; that she stated the interconnectivity is not required to currently be constructed and she requested the interconnectivity be noted and shown on the Site Plan.

Mr. Whitehouse stated in previous similar cases where the preliminary site plan did not necessitate interconnectivity, but the Commission wanted to achieve interconnectivity in the long term; that the Commission had previously requested the Final Site Plan be contingent on a cross-access agreement or suitable language being stated and shown on the Final Site Plan; that staff could work with the Applicant to achieve interconnectivity and present the Final Site Plan to the Commission for approval.

Mr. Robertson stated interconnectivity is a County Code site plan requirement for businesses, commercial uses, and hotel/motels.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to the resolution to the interconnectivity requirement, the receipt of the PLUS comments, and all other agency approvals. Motion carried 5-0.

### **(S-17-31) Weston Willows Commercial Outparcels**

#### Revised Site Plan

This is a Preliminary Site Plan for the Commercial Outparcel A of the Weston Willows property for the subdivision of a 26.737 acre +/- parcel into three parcels consisting of 2.197 acres +/-, 1.718 acres +/- and residual lands comprising 22.822 acres. Outparcel A will contain only commercially leased buildings, with access off a 30-ft ingress/egress access easement located on the northwest side of what will be known as Besche Avenue. Staff note that the applicant has planned for interconnectivity between adjoining commercial parcels as previously requested by the Commission at their meeting of Thursday, July 8, 2021. Additionally, staff would also note that there are approximately 22 parking spaces proposed to be located within the front yard setback as part of this proposal. Staff will provide the Commission with an update regarding the proposed density of the project. Tax Parcel: 135-11.00-33.00. Zoning: C-1 (Commercial Residential District). Staff are awaiting agency approvals.

Ms. DeVore stated staff noted after the Application was placed on the agenda, the proposed plan would change the residual parcel, comprising the residential area from 26.96-acres to 22.82-acres; that this would leave the density for the apartment area at 12.5 dwelling units to the acre; that 12.5 dwelling units to the acre is considered over the permitted density for the property located in the C-1 Zoning area; that additionally, she noted staff received a letter waiver for parking within the front yard setback and the letter had been circulated to the Commission.

Mr. Robertson questioned if the waiver for parking within the front yard setback was along Rt. 9 or the private road.

Ms. DeVore stated the waiver request for parking within the front yard setback is proposed along the private road and typically it is only a concern along DelDOT and State maintained roads.

Mr. Whitehouse stated the proposed parking within the front yard setback is a fraction of one parking space; that staff had looked at how to calculate density for the Application; that the residential component came first and the density was calculated based on the parcel; that there is no new residential proposed as part of the new Site Plan; that if you remove the current area it would affect the density;

that Applicant is not removing the area from the site; that it is a more artificial way of calculating density; that staff did check Ordinance 2802, passed last year by County Council; that it specifically provided new guidance on how density should be calculated with a residential and commercial component; that he is of the view, the Application complies with Ordinance 2802; that academically it could be looked at as raising the density; that as long as the site plan does not come forward for any additional residential units, the density will remain unchanged; that the land is still present, only with commercial on the land; that the parcel could be deeded off and sold in the future; that under this circumstance, should additional residential come forward, it would exceed the maximum permitted density and the deeding of separate parcels would not change the density, as long as it would remain commercial.

Chairman Wheatley questioned if a separate parcel was created and sold, would it no longer be part of the subdivision.

Mr. Robertson stated the parcel would no longer be part of the original subdivision and when a parcel is subdivided, it becomes a separate stand-alone parcel.

Chairman Wheatley stated if the subdivided parcel becomes a stand-alone parcel, it would change the acreage of the subdivision; that part of the rationale for having density requirements is to maintain a certain amount of open space, open land, and other land and this is the only reasoning the Application is problematic to him.

Ms. DeVore stated there were wetlands shown on the Final Site Plan, which were not stated to be tidal or non-tidal wetlands and even if the wetland area were to be added to the gross acreage of the site, it would still not meet the density requirements.

Ms. Stevenson requested confirmation of the zoning of the property.

Mr. Robertson stated the property is currently in C-1 Zoning.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action on the Revised Site Plan for further consideration. Motion carried 5-0.

### **Lands of Shawn Noble**

Minor Subdivision off a 60-ft easement

This is a Minor Subdivision that proposes the creation of one lot plus residual lands off a proposed 60-ft wide access easement. Lot 1, which will have frontage to Cool Spring Road (S.C.R. 290), will be 7.28 acres +/-, and the residual lands will be 4.00 acres +/- . Staff note this application proposes the last lot that may be subdivided out of Parcel 38.00 as all four minor subdivision allowances will be utilized. The property is located on the east side of Cool Spring Road (S.C.R. 290). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-5.00-38.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

The Commission discussed the maintenance agreement as noted on the site plan for the Application.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 60-ft. Motion carried 5-0.

### **Lands of Stephen & Anne Kelly**

Minor Subdivision off a 20-ft easement

This is a Minor Subdivision Plan for the subdivision of a 45.41 acre +/- parcel into two (2) buildable lots both consisting of 1.9875 acres +/- as well as residual lands containing 411.435 acres +/- . The property contains access off an existing 30-ft ingress/egress access easement located on the northwest side of Shell Station Road (S.C.R. 427). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 333-10.00-22.02 Zoning: AR-1 (Agricultural Residential District.) Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 20-ft. Motion carried 5-0.

**Lands of Walter & Stacy Beck**

Minor off of a 50-ft easement

This is a Minor Subdivision Plan for the subdivision of a 31.49 acre +/- parcel into two (2) buildable lots with proposed Lot 1 consisting of 21.02 acres +/- and proposed Lot 2 consisting of 10.47 acres +/- off of a proposed 50-ft ingress/egress access easement over an existing driveway known as Hermitage Way. The property is located on the south side of Fisher Road (S.C.R. 262). Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 334-10.00-69.05. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50-ft. Motion carried 5-0.

**Lands of Jeffrey S. Burton et. al**

Minor Subdivision off a 75-ft easement

This is a Minor Subdivision and Lot Line Adjustment and Consolidation Plan for the subdivision of 15.47 acre +/- parcel of land into one (1) proposed lot consisting of 0.76 acres +/- and two (2) existing and reconfigured lots, consisting of 0.75 acres +/- and 0.78 acres +/- . The property is located on the west side of Revel Road (S.C.R. 410). Zoning District: AR-1 (Agricultural Residential District). Tax Parcels: 133-16.00-81.00, 81.02 & 81.08. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 75-ft. Motion carried 5-0.

OLD BUSINESS

**C/Z 1960 OA Oaks, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a HR-1/RPC High Density Residential District – Residential Planned Community to a HR-1/RPC High Density Residential District - Residential Planned Community to amend conditions of approval of Change of Zone No. 1858 (Ordinance No. 2621) relating to the workforce housing requirements, internal road standards and amenities deadlines for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.8455 acres, more or less.** The property is lying on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384). 911 Address: N/A. Tax Parcel: 533-11.00-82.00

The Commission discussed this application which has been deferred since January 13, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1960 for OA Oaks, LLC, which seeks to amend certain conditions of approval imposed as part of C/Z 1858 and Ordinance No. 2621 for the Residential Planned Community known as Ashton Oaks, based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks to amend Condition B regarding the income eligibility and rent standards for the affordably priced units within Ashton Oaks; Condition G regarding entrance road and sidewalk requirements; and Condition I regarding the timeframe for completing the recreational amenities.
2. According to the Applicant, these amendments are minor in nature and primarily seek to clarify the requirements imposed upon the project. In the case of the amendment to the income eligibility standards for the affordably priced units, the Applicant seeks to broaden the income range so that this project can serve a greater number of lower-income families in Sussex County.
3. These amendments will not affect the Findings contained in Ordinance No. 2621 stating that this project will create modern, safe affordable, and fair housing options for residents of Sussex County, including specifically, housing for the Sussex County workforce. These amendments will allow the Applicant to continue to help address the rental housing needs of Sussex County's low and moderate-income workforce in a location that is in close proximity to employment and town centers.
4. The amendment to Condition B regarding income eligibility is reasonable in that it adds clarity to the requirements while providing some flexibility so that the restricted units are rented to as many qualified tenants as possible. However, the average household income for all of the restricted units within the RPC must still remain at or below 70% AMI on an annual basis. Such an average will ensure that this project is available to a more diverse applicant pool, which is an important aspect of fair housing and was a fundamental part of the Applicant's stated intention to include workforce housing within the RPC based upon income eligibility.
5. The Amendment to Condition G regarding entrance road and sidewalk requirements is reasonable. Because this will be a rental project with parking lots, it is appropriate to seek relief from certain design requirements that are primarily applicable to single-family subdivisions.
6. The amendment to Condition I regarding the timeframe for completion of recreational amenities is also appropriate. The original approval stated that the recreational amenities must be completed by the issuance of the building permit for the 4<sup>th</sup> apartment building. These timing requirements are generally used to ensure that recreational amenities are open and available to third-party purchasers of homes. In this case, the Applicant will be the developer and owner of all of the rental units within the project, so there are no third-party property owners to protect. However, it is appropriate to ensure the completion of these amenities within a reasonable time.
7. These changes do not affect the substance, density, or appearance of the RPC. As a result, they have no impact on the community, neighboring properties, or area roadways.
8. For all of these reasons, it is appropriate to modify Conditions B, G, and I of Ordinance No. 2621 so that they now state as follows:

CONDITION B:

*B. As offered by the Applicant, 36 of the units shall be designated as "Restricted Units" for the purpose of providing "workforce housing" for a period of 30 years following the date the first building receives its Certificate of Occupancy, subject to the following terms and conditions:*

1. Rent -- *The rent for the Restricted Units shall be established based upon 30% of gross household income for 70% of the Area Median Income ("AMI") for Sussex County as established by the U.S. Department of Housing and Urban Development ("HUD") and updated annually and as adjusted for household and unit size.*
2. Eligible Income – *Eligible income is 50% to 80% of the area median income for Sussex County adjusted for household size and as updated annually by HUD,*

- provided that the average household income for all of the Restricted Units within the RPC is at or below 70% AMI on an annual basis.*
3. *Vacant Units – During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market-rate units. Post lease-up, any vacant units for which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered for lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.*
  4. *Qualifying Tenants – Eligible tenants for the Restricted Units must:*
    - a. *Provide proof of citizenship.*
    - b. *Be of eligible income as defined in “2”, above.*
    - c. *Be employed and live in Sussex County for at least one year preceding the date of application.*
    - d. *Occupy of Restricted Unit as the tenant’s principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant’s principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.*
    - e. *Comply with other requirements that apply to tenants of Non-Restricted Units.*
  5. *Unit Integration – Restricted Units must be fully integrated into the community and shall not be substantially different in external or internal appearance and fit-out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market-rate units, such as an oven, refrigerator, dishwasher, and washer and dryer. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit with the exception that the Applicant may have up to 10% more 3 – Bedroom Restricted Units, and therefore fewer 1- and 2-Bedroom Units in proportion to the total number of apartment units. For example, if 25% of the units are 3-Bedroom Units, then between 25% and 35% of the Restricted Units must be 3-Bedroom Units.*

*Conditions B.5. through B.7 are unchanged from Ordinance No. 2621 and are renumbered as B.6 through B.8.*

**CONDITION G:**

- G. *The entrance road up to and including the first intersection must meet or exceed the street design requirements contained in Section 99-18 of the Sussex County Code. There shall be a fully connected, ADA compliant internal sidewalk and multi-modal path pedestrian system serving all buildings. This internal sidewalk and pathway system shall extend to the public right-of-way. The location and type of construction of the sidewalk and pathway system shall be shown on the Final Site Plan.*

**CONDITION I:**

- I. *Recreational amenities, including the clubhouse, outdoor swimming pool, and deck, playground, walking trail, and enclosed dog park shall be completed prior to the issuance of the Building Permit for the sixth multi-family building.*

Ms. Stevenson questioned how tenants are acquired.

Ms. Wingate mentioned in the presentation it was explained they keep a waitlist for applicable tenants.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval for C/Z 1960 OA Oaks, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

**2021-06 – Coral Lakes (F.K.A. Coral Crossing)**

A Coastal Area cluster subdivision to divide 152.32 acres +/- into 315 single family lots to be located on a certain parcel of land and lying and being in Indian River Hundred, Sussex County. The property is located on the southwest side of Robinsonville Road (S.C.R 277) approximately 0.65 mile south of Kendale Road (S.C.R. 287) Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since January 27, 2022.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action to allow the Commission additional time to consider the evidence submitted into the record. Motion carried 5-0.

**C/U 2317 William E. Martin, II**

**An Ordinance to grant a Conditional Use of land in a GR General Residential District for a sign and vehicle graphics business to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 0.34 acres, more or less.** The property is lying on the northwest side of Wolfe Neck Road (S.C.R. 270), west of the intersection of Wolfe Neck Road (S.C.R. 270) and Munchy Branch Road (S.C.R. 270A). 911 Address: 35583 Wolfe Neck Road, Rehoboth Beach. Tax Parcel: 334-6.00-340.00.

The Commission discussed this application which has been deferred since January 27, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2317 William W. Martin, II for a Sign and Vehicle Graphics Business on land zoned GR General Residential based upon the record made during the public hearing and for the following reasons:

1. The site is zoned GR-General Residential. There have been other business uses in the vicinity, including Blue Hen Towing that previously operated next door. There are also several small businesses and commercial uses in this area of Munchy Branch Road and Wolfe Neck Road. This is an appropriate location for a small business like this.
2. The property is located within the Coastal Area according to the Sussex County Comprehensive Plan. Small business uses like this one are appropriate within this Area according to the Plan.
3. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways.
4. The Applicant has stated that all material storage, fabrication, and sign production will occur inside of the buildings on the site.
5. The Applicant has stated that most of the work occurs off-site at the time of installation at a customer's property.
6. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County.

7. No parties appeared in opposition to the application.
8. This recommendation is subject to the following conditions:
  - A. The property shall be used for a sign construction and vehicle graphic business.
  - B. There shall be no retail sales from the property.
  - C. All sign fabrication and production shall occur indoors.
  - D. There shall not be any outdoor storage of materials associated with the use, including signs waiting for installation and old or damaged signage. This prohibition also includes all paints, inks, and chemicals, which shall be stored and disposed in accordance with state and federal requirements.
  - E. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.
  - F. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
  - G. One 32 square foot lighted sign shall be permitted. As requested by the Applicant, it shall be located on the building.
  - H. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
  - I. The Final Site Plan shall provide for interconnectivity with adjacent properties if and when those properties may be used for business or commercial purposes.
  - J. Failure to abide by any of these conditions of approval may result in the termination of this conditional use.
  - K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval for C/U 2317 William W. Martin, II, for the reasons and conditions stated in the motion. Motion carried 5-0.

**C/Z 1943 Shirley and Gordon Price, Jr.**

**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 Baltimore Hundred, Sussex County, containing 0.91 acres, more or less.** The property is lying on the north side of Atlantic Avenue (Route 26), approximately 0.13 mile northwest of Roxana Road (Route 17). 911 Address: 34861 Atlantic Avenue, Ocean View. Tax Parcel: 134-11.00-175.00.

The Commission discussed this application which has been deferred since January 27, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1943 for Shirley and Gordon Price, Jr. for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is currently zoned AR-1 along Route 26. It is surrounded on either side by C-1 and CR-1 Zoning, plus a number of business and commercial uses. The continued designation and use of this property for residential purposes is no longer appropriate. This is an appropriate location for C-2 zoning.



3. C-2 Zoning at this location along Route 26 will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is mostly in the "Coastal Area" according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1943 Shirley and Gordon Price, Jr., 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.

### **2021-19 East Gate**

A Coastal Area cluster subdivision to divide 36.71 acres +/- into 88 single-family lots to be located on certain parcels of land and lying and being in Baltimore Hundred, Sussex County. The properties are located on the southwest side of Zion Church Road (Route 20), approximately 0.76 mile southeast of Evans Road (S.C.R. 383). Tax Parcels: 533-11.00-45.05, 45.06, 45.07 & 45.08. Zoning: GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Preliminary Subdivision Plan, the Applicant's exhibit booklet, including the Chapter 99-9C response, the Applicant's environmental assessment, and public facility evaluation report, PLUS review comments, the Applicant's PLUS review responses, photographs, TAC comments, including a letter from the Division of Watershed Stewardship, the U.S. Department of Agriculture, the Delaware Division of Public Health, the U.S. Fish & Wildlife Service, the Delaware Electric Coop, Delaware State Fire Marshal Office, Division of Waste and Hazardous Substances, the Applicant's soil report and wetland exhibits, DelDOT Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division, zero mail returns and seven letters, those which were received after the paperless packet have been circulated to the Commission.

The Commission found Mr. Jim Fuqua, Esq. spoke on behalf of the Application, East Gate; that also present were Mr. Kevin McLaughlin and Mr. Mick Kenny, with McKee Builders, Mr. Phil Tolliver with Morris & Richie, Associates, Mr. Matt Janette with Geotechnology Associates and Mr. Joe Caloggero with the Traffic Group; that the Application is a request for an 88-lot single-family cluster subdivision, that the parcel contains 36.71-acres, that the parcel is located on the southside of Zion Church Rd.; that this is approximately 1,500-ft. northwest of the intersection of Zion Church, Johnson Rd. and Byard Rd. intersection; that there is a mixture of zoning designations and uses within the immediate area; that the parcel, and adjacent areas are located within the GR General Residential Zoning District, with the exception of three parcels; that one parcel is located within the C-1 General Commercial Zoning District; that the other two parcels are located within the B-1 Business

Neighborhood Zoning District; that the northside of Zion Church Rd. contains a mixture of zonings being AR-1, C-1, CR-1 and HR-1/RPC; that the proposed site borders vacant land to the west; that the next parcel to the west of the site is the Twin Cedars Development, which is a GR/RPC; that this development is made up of 254-units; that the units are made up of 168 apartments, 44 townhomes and 42 single-family lots; that Twin Cedars was approved by County Council on September 2021; that to the east of the subject parcel the land borders the Fox Haven Subdivision; that Fox Haven is 175 single family lots; that across Zion Church Rd. from the subject site are two recently approved residential developments; that one development is Sweet Bay, which is a 65 single-family lot AR-1 cluster subdivision; that Sweet Bay was approved in 2019; that the other development is Ashton Oaks, which is a 178-unit apartment development; that Ashton Oaks was approved in 2018; that the area is a rapidly developing residential area; that the Applicant is proposing an 88-lot cluster subdivision; that the Commission typically reviews AR-1 cluster subdivisions; that the subject application is zoned GR General Residential; that the parcel is located with the Coastal Area, which is considered a growth area under the Comprehensive Plan; the Coastal Area does permit the clustering of single-family lots to a minimum lot size of 7,500 sq. ft. in all residential districts using central water and sewer; that when the Ordinance was changed to require AR-1 subdivisions in the Coastal Area to comply with the AR-1 cluster provisions it was only for AR-1 lands; that this did not apply to GR or other zoned lands; that the current Application is not subject to the AR-1 cluster requirements; that the language in the AR-1 cluster provision allows the lot size to be reduced from 20,000 sq. ft. to 7,500 sq. ft. and the width of 100-ft to be reduced to 60-ft.; that in the GR Coastal Area cluster, the provision allows the lot size 10,000 sq. ft. to be reduced to 7,500 sq. ft. but there is no provision to the lot width reduction; that a GR cluster is required to have a 75-ft. width; that the proposed lots within East Gate will meet the minimum of the 75-ft. width requirement; that the subject parcel was approved for a Conditional Use in 2008 which was approved; that the Conditional Use was for a healthcare medical office complex, containing 102,000 sq. ft. of floor area located in six buildings and approximately 500 parking spaces; that the timing of this approval was right before the recession which brought development to a halt, which lead to the expiration of the Conditional Use for the lack of progress; that the parcel is zoned GR; that the purposed of the GR District is to provide medium density residential development; that detached single-family dwellings on individual lots are a permitted use in the GR Zoning district; under the 2019 Comprehensive Plan the land is located within the Coastal Area; that the Coastal Area is listed as a growth area; that a variety of residential uses are permitted within the Coastal Area; that the subdivision will have central water for domestic use and fire protection; that the water will be provided by Artesian; that Artesian holds the CPCN to serve the area; that the property is located within the boundaries of the Johnson's corner portion of the Sussex County sanitary sewer system; that the County Engineering Department indicated wastewater capacity is available for the development; that the original owners of the property already paid the monetary contribution to the County; that this was required by the Memorandum of Understanding which was signed by several area property owners when the Johnson's Corner sewer district was being considered and created; that the site is located within the service area of Delaware Electric Coop; that Delaware Electric Coop has already confirmed several facilities are located within the area to serve the development; that stormwater management will be designed and constructed in accordance with DNREC regulations; that the stormwater will be reviewed and approved by the Sussex Conservation District; that all stormwater located onsite will be directed to a storm drain network which will direct the stormwater to the stormwater management system; that the stormwater management system will utilize best management practices; that a subsurface exploration soil study was conducted by Geotechnology Inc.; that the soil study included a field exploration, lab testing and analysis of soil conditions, appropriate site preparation recommendations, and proposed areas for the stormwater management facilities; that there have been recent changes made by the EPA and the U.S. Army Corp of Engineers as to the definition as to what constituted as a jurisdictional non-tidal wetland, which would be subject to the

U.S. Army Corp of Engineers regulations; that he does understand the Commission is well aware of the recent changes;

that a wetland delineation was performed by Geo-Technology, Inc. for the East Gate site; that the wetland delineation did determine there were three isolated forested areas with some wetland characteristics on the site; that under the applicable Federal regulations those areas were not found to be jurisdictional adjacent wetlands; that the wetland delineation was submitted for review to the Philadelphia District Corp of Engineers, resulting in an approved Jurisdictional Determination letter was issued on March 26, 2021, confirming there were no non-tidal jurisdictional wetlands located on the site; that the letter is valid for a period of five years; that there are no state regulated tidal wetlands located on the site; that there is a portion of the Batson Branch tax ditch which runs along the western portion of the property and crosses the front western portion of the site; that the tax ditch ROW across the front will be located in the accordance to the requirements of DNREC's State Tax Ditch Program; that since the ditch areas are considered non-jurisdictional, no permitting is required from the Army Corp of Engineers or DNREC; that a portion of the tax ditch will be reconfigured for the site in accordance with DNREC's regulations; that the entire site is located out of the Flood Hazzard area, within Flood Zone X, which is an area of minimal flood hazard; that certain parts of the site will be raised to allow the use of gravity sewer to serve the site, not requiring the use of an onsite pump station; that it is anticipated site grading will utilize onsite material to achieve a balanced site; that this will eliminate or minimize any need to import or export soil; that within the letter from DelDOT, dated December 23, 2020, it was stated the Applicant could pay an area-wide study fee based on the minor project impact considered by DelDOT; that the Applicant will be responsible for the standard right-of-way dedication, the 15-ft. easement dedication and be required to participate in a signal agreement for a traffic signal located at the Zion Church Rd., Byard Rd. and Bunting Rd. intersection; that the entrance to the development will be designed and constructed in accordance with DelDOT requirements; that no Traffic Impact Study (TIS) was required, as there was already a TIS performed in relation to the Twin Cedars Application; that the site is located within the Indian River (IRSD) School District; that the site is located under the Roxanna Volunteer Fire Company for fire services; that within GR District it is permitted to have approximately four lots per acre; that the proposal of 88-lots equals a gross density of 2.4-lots per acre; that the entrance will be from Zion Church Rd. in accordance to all DelDOT requirements; the stormwater ponds will be located as shown on the preliminary site plan; that Lot 1 and Lot 88 are the closest lots to Zion Church Rd.; that the lots are back approximately 125-ft. from the road; that the entrance will be landscaped and have the stormwater pond on one side; that there will be appropriate landscaping provided at the entrance to provide an attractive entrance from Zion Church Rd.; a school bus stop will be provided at either the site entrance or internally at the community recreation area; that the location will be coordinated with the school district and shown on the Final Site Plan; that as required by the subdivision Ordinance there will be a 25-ft. forested landscape buffer along the east, west and southern boundaries of the site; that the existing trees within the buffer area will be preserved; that the landscape buffer will be planted in the non-forested portions, in compliance with the definition of a forested landscape buffer in the Code; that there is one street within the development, known as East Gate Drive; that it comes in from the entrance at Zion Church Rd., forming a loop, and intersecting with itself; that there will be an interconnection stub providing possible future interconnectivity to the property to the west, which is located approximately from Lot 72; that the internal street will be private; that the private street will be built to County road standards; that the private road will be maintained by the Homeowners Association; that the street will have sidewalks located on both sides of the street; that there will be unintrusive downward directed street lighting; that the proposed 88-lots will be larger than most cluster subdivision lots; that the lots will range in size from 8,377 sq. ft. to 11,233 sq. ft.; that the average lot size is 9,319 sq. ft.; that there is a proposed community recreational area, consisting of an outdoor pool, deck area, restroom facilities, equipment storage areas and 16 parking spaces; that the recreational amenities are surrounded by an area which is approximately 32,000 sq. ft. of open space;

that the recreational amenities are proposed to be completed by the issuance of the 45<sup>th</sup> residential building permit; that the Ordinance requires a minimum of 10% open space; that East Gate proposes 14.48-acres of open space, which equals approximately 39% of the site; that the development will have a Homeowners Association (HOA) comprised of all lot owners; that the HOA will be responsible for collecting assessments, forcing the community restrictions, maintaining the streets, entrance, buffers, landscaping, recreational areas, stormwater management facilities and all other common areas; that he requested to submit proposed Findings and Conditions; that there was a letter within the packet from the owners of the land to the southwest or rear of the site; that the letter mentioned the owners hunt the area which is not developed; that the owners requested a notice be given to potential buyers; that in Proposed Condition P it states on the Final Site Plan and within the recorded covenants a notice shall be contained stating hunting and firearm target practice activities occur on property to the rear or south of the development; that the proposed East Gate GR cluster subdivision is in accordance to the requirements and objectives of the Comprehensive Plan, the Zoning Ordinance and the Subdivision Ordinance; that the proposed development is in character with the nature and trend of development of the area and the proposed 88-lot subdivision will have less of an impact than the previously approved medical office complex.

Ms. Wingate questioned which traffic light the Applicant's DelDOT contribution would be applied to; that she questioned the blank tax ditch land development project review request form; that she stated the PLUS review mentioned concern about the soils located on the property and questioned if a picture submitted into the record was part of the proposed property.

Mr. Robertson stated the tax ditch land development project review request form must be completed and submitted before submission of the Final Site Plan and can be listed as a Condition of Approval.

Ms. Stevenson questioned if the property was ever under any type of protected status; that she questioned where the three forested areas with wetland characteristics are located on the site.

Chairman Wheatley questioned if a wetland delineation from the United States Army Corp of Engineers was submitted into the record and if the stated determination is still currently enforced.

Mr. Fuqua stated it is the first intersection to the south; that when exiting the subdivision and making a right, it is the intersection of Zion Church Rd., Johnson Rd., and Byard Rd.; that the Applicant will be required to pay for part of the present traffic signal at the intersection; that the tax ditch land development project review request form was submitted as an exhibit as it is required to be applied for in the future and is listed as one of the proposed conditions; that he is not certain if the subject picture is part of the Application property or not; that he had read the letters stating previous remarks were made regarding the inability of the property being developed; that these comments were not made by the current property owner or the current developer; that he cannot speak to what was previously said; that he was the attorney who represented the Application for the medical office complex; that he looked at the site plans from the previous Application; that the office buildings were proposed to be located to the front of the property; that the rear of the property was proposed to be placed in a conservation easement; that at the time, in the proposed design for the medical office, they did not require any need for the rear of the property; that the Army Corp of Engineers had walked the site in 2008; that on the site plans for the medical offices, it is noted the rear of the property is not considered jurisdictional wetlands; that the rear of the property is a low area, but the area was never designated as Federal jurisdictional wetlands; that there are low spots which will require filling and raising; that a property owner has a right to do this if it is not a regulated wetland; that the three forested areas with wetland characteristics is located within Exhibit 6 in the Army Corp of Engineers permit; within the physical wetland delineation it was determined these three areas are not considered jurisdictional; that

he confirmed the wetland delineation and determination from the U.S. Army Corp of Engineers is submitted into the record and the determination is currently being enforced; that within an EPA document, which can be located online, it stated once the approved jurisdictional determination is received it is valid for five years; that the determination will be honored, even with any changes to the rules, unless applying for a permit and due to the determination of no jurisdictional wetlands being located on the site, they will not be requesting any permits in the future.

The Commission found Mr. George Schultz spoke in opposition to the Application; that he was previously informed by Ryan Homes that the subject property would never be developed due to the presence of wetlands; that he submitted a picture of his property; that he stated it would be considered wetlands regardless of the area being determined jurisdictional or not; that the photo shown was taken approximately 200-yards wide to the cornfield located at the top of the site plan; that the 200-yard area possessed an abundance of wildlife; that the developer will be destroying a forest which, according to the PLUS comments, was established in 1937; that they previously had no issue with the proposal of the medical buildings located to the front of the property; that having homes so close to his property will not be offering him any favors; that within the PLUS review comments it mentioned DNREC is not in favor of the proposed development to the site; that if the development was proposed on flat, dry land, he would have no issue with the development; that he has an issue with the destruction of the forest; that he understands development must occur; that development has already occurred on the opposite side of the street; that with all the recent development he has concerns with traffic on Zion Church Rd and he feels with a one-way entrance and exit for the development, it will become a nightmare.

The Commission found that Ms. Elizabeth Schultz spoke in opposition to the Application; that she stated East Gate is compared to Fox Haven, Twin Cedars, and Sweet Bay developments; that Twin Cedars, Fox Haven, and Sweet Bay have preserved the wetlands on their properties, and she requested East Gate development also preserve the wetlands by building to the front of the property.

The Commission found that Ms. Patricia Ashburn spoke in opposition to the Application; that when she purchased her home within Fox Haven she was informed the development of the subject property would not be possible due to the presence of wetlands; that there is a large berm at the rear of her property to prevent the water from entering her property; that she also has swales; that she questions the need for a berm and swales if there is no presence of water behind her property; that the subject property is full of wetlands; that she has seen the presence of turtles, crayfish and multiple other wildlife; that she has concerns about the destruction of the forest and the wildlife in them; that she has concerns of infrastructure; that she has concern for the already crowded school districts; that she is not opposed to the development if the wetlands could be left alone and her biggest fear is the potential impact to the environment.

The Commission found that Mr. Kevin Clark spoke in opposition to the Application; that he is concerned about the impact on the wetlands; that traffic is currently unbelievable on Zion Church Rd.; that it takes him an hour to get to Coastal Hwy. during peak season; that Rt. 54 cannot be widened any more than it already is; that development is coming more and more down Rt. 54; that he questions how residents will get around with all of the development; that emergency vehicles needing to get to Coastal Hwy. from Roxanna Fire Department in peak season is difficult; that there is constantly water located on the subject property and requested the Commission take these issues into consideration.

The Commission found Mr. Luke Crofoot spoke in opposition to the Application; that he lives within Fox Haven; that upon purchasing his home, he was shown diagrams which reflected the presence of wetlands to the west of the Fox Haven Development; that the Fox Haven development was designed to

preserve the wetlands; that the biggest portion of wetlands located on the subject property come over onto the Fox Haven property; that on the Fox Haven property the wetlands have been avoided; that jurisdictional authority is an administrative term for responsibility; that the term does not change the fact that there is a wetland area located on the subject property; that there is presence of standing water two feet deep; that he cannot imagine how the construction of the homes will be able to take place without large quantities of dirt being trucked in; that he does have concern about the current wildlife; that he is not against development; that he would not live here without the effort of a developer; that he requests smart development in the best context possible; that he would not oppose development to the north portion of the property, much like the previous proposal of the medical office complex; that once an approval is granted, the wetlands will be gone and to never return; that he is concerned about traffic; that multiple subdivisions have been approved which will feed traffic out to Zion Church Rd.; that he has not seen any DelDOT documentation where they have calculated the capacity of the thoroughfares which feed the areas; that he feels a two-laned road will not suffice in any way during peak season; that he requested the Commission consider the Application from the perspective of current homeowners and become stewards for the wetlands which are no longer under the jurisdiction of the U.S. Army Corp of Engineers.

The Commission found Mr. Lawrence Long spoke in opposition to the Application; that the adjoining owners on the southernly end are listed incorrectly on the subdivision plat; that he owns the property located to the south and west of the subject property; that his great-grandfather purchased the property in 1906; that his property to the west of the subject site is actively hunted; that potential buyers of the proposed lots should be notified hunting hours occur a half hour before sunrise to sunset; that on page 61 of the paperless packet it mentions the minimal use of wetlands and floodplains; that a wetland delineation was prepared by GTA in December 2020, which stated there was no presence of jurisdictional wetlands on the property; that he does not believe the findings to be true; that on page 93 of the paperless packet in a document from Morris & Richie it is stated the project is located within Investment Level 3; that Investment Level 3 areas may mean there is potential for environmental concerns on or near the parcel; that it was encouraged the design respect current environmental features; that the project was reviewed in September 2020; that at that time the proposal was for 102 units; that at the time the units were clustered to the front of the property, avoiding forest and wetlands onsite; that at that time the open space equaled in 28-acres of open space; that the current proposal is requesting to use the entire site for development, leaving 15-acres of open space; that there is another plan which is more environmentally friendly to the site than the current Application; that on page 93 of the paperless packet it mentions the non-tidal wetlands provide significant water quality benefits and a benefits for plant and animal species; that filling in the wetland areas and the construction of homes upon these areas will directly result in adverse drainage and flooding impacts for future residents; that due to these issues the State objected to the proposed development of the property; that on page 104 of the paperless packet, DNREC requested a meeting to discuss permit process; that the Applicant's response to the recommendation was addressed by the jurisdictional determination which was issued by the U.S. Army Corp of Engineers on March 26, 2021; that on page 218 of the paperless packet it states the adverse impacts on drainage, water quality and current animal species; that the Applicant again responded there were no jurisdictional wetlands found onsite; that the picture Ms. Wingate was questioning is the entrance to his farm; that his son does block a culvert pipe to flood the land on the farm to promote snow geese; that his son will remove the block next week, where the water will flow as it normally would; that there have been multiple changes since 2015 to the Navigable Waters Protection Rule; that the Biden Administration struck down the previously approved rules through the Trump Administration; that in November 2021 the Biden Administration proposed a new rule to return the Waters of the United States to the previous 2015 rules and definitions; that the jurisdictional determination is valid for five years for the U.S. Army Corp of Engineers, however there has been changes made to the rules at the Federal level; that the current jurisdictional determination does not

adhere to the standards being enforced currently; that he requests the Commission deny the proposed Application and request the developer submit a plan more environmentally friendly.

Mr. Hopkins questioned how the picture of Mr. Long's farm was included in the record and requested confirmation Mr. Long's son purposely floods the farm with the intention of bringing in waterfowl for hunting.

Mr. Whitehouse stated the picture was submitted, by email, to the Planning & Zoning Department earlier that day.

Mr. Long stated the picture was taken from Rt. 20 and shows approximately 2,000-ft. onto his farm; that he confirmed his son does block a culvert to allow water to collect on the property to promote waterfowl for hunting; that it does not have any impact on the Twin Cedars development, and he mentioned Twin Cedars development does avoid the wetlands on their property.

The Commission found Ms. Theresa Mosier spoke in opposition to the Application; that she requested to submit pictures into the record, which were taken from the back of her property; that she agrees with the previous statements submitted by others; that she requests the Commission consider the comments made in the PLUS review.

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

There was a total of ten attendees in the room who were opposed to the Application.

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

In relation to Application 2021-19 East Gate. Motion by Ms. Wingate, to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

### **C/U 2288 Broom Solar Partners**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a solar farm to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 72.00 acres, more or less.** The property is lying on the north side of Frankford School Road (S.C.R. 92) approximately 0.55 mile west of Pyle Center Road (S.C.R. 20). 911 Address: N/A. Tax Parcel: 533-5.00-47.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Conceptual Site Plan, a copy of the Applicant's Executive Summary, a copy of the staff analysis, a copy of the deed, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the DelDOT Service Level Evaluation Response, zero comments, and zero mail returns.

The Commission found that Mr. Jeff Machiran with EDF Renewables spoke on behalf of the Application, Broom Solar Partners; that also present were Mr. Dave Shapley, from Delaware Electric Cooperative and Mr. Chad Kayser, Environmental Consultant with TRC and Mr. Yannick Tamm with EDF; that the Broom Solar project is the second EDF project which is developing within Delaware Electric service territory, in conjunction with Delaware Electric and Old Dominion Electric Cooperative (ODEC); that Distributed Generation projects generate electricity directly to homes and

businesses via local electrical distribution lines compared to larger centralized powerplants; that centralized powerplants push power onto high voltage transmission lines which carry electricity hundreds to thousands of miles away; that a key benefit of distributed generation projects like Broom Solar is they generate electricity in the communities where the power is consumed; that this reduces the need for long transmission lines and other costly infrastructure; that providing clean, renewable power close to the end user, they improve the resiliency of the local distribution grid and deliver the power at a all-end lower cost to the user; that another benefit to distributed generation projects is the smaller footprint of the projects; that this means a smaller impact; that Broom Solar will occupy tens of acres versus hundreds or even thousands of acres; that Broom Solar Partners, LLC, which is a wholly-owned entity of EDF Renewables Distributed Scale Power, is the Applicant of the project on behalf of the property owner, Wilgus Family Revocable Trust; that the proposed location is on one parcel of land, which runs along Frankford School Rd in Frankford, Delaware; that the project area is currently an agricultural field with no existing structures; that the anticipated project will be less than 35-acres; that the capacity to the proposed project is three megawatts of alternating current; that this is considered a relatively small project; that the project is sized to meet the local distribution system; that this type of project is referred to as distributed generation because it is connecting to the distribution grid as opposed to the electrical transmission system; that the point of interconnection will be at Delaware Electric's existing electric line, running along Frankford School Rd.; that this will end at the Omar substation, which is 1.5-mile away; that the equipment will consist of racking systems, which are mounted on support posts, panels which are installed on top of the racking systems, an inverter/transformer skid, interconnection equipment, which are typical utility poles and a small weather station; that there is a stream which runs to the south eastern portion of the project; that the stream will be avoided with a minimum 100-ft. setback; that there is a tax ditch to the northern corner of the property, which will be avoid as well; that there is an access drive running through the center of the property; that at the end of the access drive there is a turn around for fire trucks and emergency personnel; that the State Fire Marshal has reviewed and provided comment to the preliminary plan; that the proposed design is based on the State Fire Marshal's comments; that there is proposed fencing surrounding the array; that they are not proposing any grading onsite; that the project is set back 800-ft. from the eastern side of the site; that from the western portion the project is located 1,200-ft. from the road; that to date, EDF's Environmental Consultant, TRC, conducted a field reconnaissance, wetland delineation, and a habitat assessment to identify potential environmental and land use impacts on the project; that they did identify one perennial stream and 14 agricultural ditches; that all of these areas will be avoided and appropriately buffered with setbacks; that there were no threatened or endangered species observed on the site; that there is low potential of onsite occurrence due to the history of land cultivation; that there were no cultural or historic resources previously identified onsite; that stormwater runoff will be tightly controlled in accordance with State and local regulations; that there are no impact to drainage patterns anticipated due to the ability of the arrays to conform to the existing topography, as well as the gaps between panels and space between arrays allow infiltration into the grounds surface; that the project will obtain all necessary permits required by local, State and Federal agencies; that siting for the project began with Delaware Electric in 2020; that interconnection studies, site diligence and project and civil engineering began around the same time; that they then initiated the permitting process; that EDF is committed to community engagement; that EDF reached out directly to neighbors by mailings; that EDF held a community event at the site on January 26, 2022 and January 27, 2022, in advance to the formal notices received from the County; that this year EDF will begin finalizing engineering, procuring of equipment and construction of the project, if approved; that construction is anticipated to take approximately five months; that the first month would consist of



site preparation, installing the access road and fencing; that about two months would be required for the installation of the posts and racking; that approximately two more months are required for the installation of the modules, wiring and conduit, that next they install the remaining electrical equipment, including inverters and transformers; that a month would be required for the final system testing and commissioning; that by the beginning of 2023 the project could begin commercial operation; that EDF Renewables has over 35 years of experience in the United States developing wind, solar and storage projects; that they have developed over 16,000 megawatts of renewable energy projects; that they current operate over 11,000 megawatts; that EDF is one of the largest owners and operators of renewable energy in the country and EDF is well equipped to handle this type of project due to their experience and expertise.

The Commission found that Mr. Shapley, Vice President for Delaware Electric Coop, spoke on behalf of the Application; that the Coop is a non-profit organization owned by the members it serves; that they are very supportive of their local community; that Delaware Electric purchased power from Old Dominion Electric Cooperative (ODEC); that ODEC is a non-profit, wholesale generation transmission cooperative which operates for the benefit of its members who are the owners; ODEC serves 11 member distribution cooperatives in Virginia, Maryland and Delaware; that Delaware Electric Coop (DEC) service 108,000 members within Kent and Sussex County, Delaware; that the Broom Solar Project will provide 100% of its output directly to homes and business within the County and surrounding areas; that the project was specifically designed to offset DEC's customer load in the area; that this will reduce the need for costly transmission upgrades; that the proposed Broom Solar site is proposed to connect to existing distribution infrastructure to avoid the need for a new substation; that the Broom Solar project will save DEC members about \$51,000 per year in power costs; that combined with the solar project in Greenwood, DEC members will save about \$136,000 per year; that solar panels are constructed of silicon semiconductors, much like a computer chip; that when the sunlight hits the semiconductor material, it creates a charge, which is a direct current; that the direct current is converted to an alternating current through converters so it can be fed into the distribution grid for use in homes and business; that solar creates clean, renewable electricity without the use of water, creating emissions or producing waste products; that its low visual profile and quiet operations makes for a great neighbor; that solar projects place no demand on County infrastructure or services such as roads, water, sewer, emergency services or schools; that construction consist of minimal grading and disturbance; that the solar projects are built using drive steel posts to support the solar panels versus concrete or other foundations and this allows the land to return to its previous agricultural use at the end of the project.

Ms. Wingate questioned the location of the proposed fencing; that she questioned if there is a plan in place to remove the equipment in the event the project is no longer needed and questioned what noise the project would create.

Mr. Machiran stated the fencing is proposed around the entire perimeter of the project; that the proposed fencing will be 7-ft. agricultural fixed knot fencing; that in the agreement with the property owner it is stated, should the project no longer be needed, EDF would handle the removing of all equipment where it would then be recycled leaving the property back to agricultural land; that the only noise the project would create would be a slight hum when the panel retracts to the sun; that the 24 inverters, the size of a small duffle bag, will create an occasional slight hum; that the inverters will be centralized in the field and the neighbors will not be able to hear the panels or inverters.

Ms. Stevenson questioned if EDF was part of the Power Generation Module (PGM) Grid System.

Mr. Shapley stated the proposed project will not fall back on the transmission system, therefore it will not fall into a PGM queue, making the project exempt from the PGM.

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.

In relation to Application C/U 2288 Broom Solar Partners. Motion by Ms. Wingate, to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

**C/U 2284 Eastern Shore Natural Gas Company**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for the expansion of C/U 889 (Ordinance No. 536) for public utilities or public services uses to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 29.98 acres, more or less.** The property being a landlocked parcel accessed off Emma Jane Lane, approximately 0.33 mile south of E. Newton Road (S.C.R. 584). 911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville. Tax Parcel: 131-10.00-99.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Site Plan, a copy of the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's submittal letter, the property deed, the DelDOT Service Level Evaluation Response, a copy of Ordinance 536 (C/U 889) from September 27, 1988, one mail return, zero letters in support and 28 letters in opposition, with some appearing as duplicates.

Mr. Robertson recused himself from this Application and left Chambers.

The Commission found Mr. Mark Parker, Engineer Manager for Eastern Shore Natural Gas Company, spoke on behalf of the Application; that Eastern Shore Gas has safely and reliably served the natural gas transportation needs on the Delmarva Peninsula since 1959; that they serve all of Delaware; that they support Chesapeake Utilities as the local distribution company in Sussex County, along with industrial users and energy producers; that currently they maintain almost 600-miles of transmission main pipeline in operation; that they have three compressor station sites; that two station sites are located in Delaware, one in Delaware City and the other site located in Bridgeville; that they have another site located in PA; that the subject compressor station has operated at the subject location since 1988; that the compressor ensures adequate natural gas is transported throughout the region; that the location of the subject compressor station is approximately eight acres; that the area was previously granted a Conditional Use (C/U 889) in 1988 upon the stations original construction; that Wheatley Elementary School was in place at that time; that there was infrastructure in the area, including railroad and the industrial facilities located to the north; that they have been good neighbors, living harmoniously under the granted Conditional Use since 1988; that the parcel is wholly-owned and held by Eastern Shore Natural Gas; that the property is farmed at times by a tenant farmer; that they do understand the facility does serve as a utility; that there is a solar farm located on the northwest

corner; that the compressor stations units are contained within two separate buildings; that the current Application request is to allow the current station to become a meter regulator station or also known as a receipt point for natural gas; that the existing compressor station facility is comprised of stone cover, two compressor unit buildings, several small axillary structures, a control room, a stormwater facility, above grade piping and ancillary equipment; that for all the facilities contained, they provide ancillary tenant farming to benefit the area at the time; that the interconnect project will develop approximately four acres of land; that the area is primarily stone; that there is presence of above grade piping, consisting of four, six and eight inch piping; which is proposed to be approximately five to eight feet above grade; that there would be three offload points; that at each of these locations, a truck would enter the facility and hook up to the offload points; that at any one time there could be three trucks offloading; that a trailer would offload, as they near the end of offload period, another trailer would be brought in; that the offload period takes about four hours; that a third location is shown in the case a trailer should be left behind for any reason; that they have worked closely with the Delaware Department of Transportation to provide understanding of how the trucks would move on and off the site; that the offload points could see up to six trailers per day; that the number of trailers per day will depend upon the receipt frequency; that the number of trailers cannot be any greater than six trailers, but could be less at times; that the site could see 18 trailers deliver; that this would equal to 36 total trips; that 36 total trips does not warrant a Traffic Impact Study (TIS); that the trips did warrant the need to look at the intersection of Emma Jane Lane and East Newton Rd.; that in working with DelDOT it was decided a design deviation was appropriate; that two to three trips are proposed during peak hours; that trailers may access the site from the west or the east of East Newton Road, depending on the location the gas is coming from; that the proposed shippers have not yet been determined; that through the design deviation process, which was granted by DelDOT, there were no intersection improvement required at the intersection of Emma Jane Lane and East Newton Road; that the types of trucks proposed are WB55 or WB65 trailers, which are the standard over-the-road 18-wheeler; that with the development of Miller Metals and the existing industrial facilities on Emma Jane Lane, the deviation was granted; that at the facility gas is offloaded, metered and regulated; that the gas is heated, which is required when gas pressures are dropped quickly; that the gas is not treated, processed and never evacuated to atmosphere, unless there was a pressure situation; that pressure situations can take place at any normal meter and regulator station throughout the state; that throughout the region, at a compressor station, there are always safety precautions; that the gas onsite is never treated or handled other than direct injection into the pipeline system; that if the gas should not meet the tariff standard on arrival, the valve is shut and the truck is sent away; that injection into the system is meant to indicate the lower explosive limit and the upper explosive limit; that it is meant to be more pungent than it needs to be, to ensure people are aware of its presence; that there is no actual discharge of natural gas with intent to atmosphere; that the trucks and the piping seen are approximately 800-ft. to the nearest residence; that even though they did receive siting authority with Federal Energy Regulatory Commission, they still took into account community considerations; that there is a residential community located to the southeast of the site; that the closest residence to the far eastern edge of the property is 800-ft. away; that there is a stone yard and a six foot security fence; that the fence is alarmed; that the alarm is manned by a 24/7 operation out of Dover, who also has cameras and access to ensure safety onsite; that due to the offload, there will be an operator onsite, contained within a closing gate; that they take security very seriously; that the stormwater facility has been placed to the eastern side of the facility; that the stormwater management is a partial infiltration facility; that it does contain a small spill-away in the over lands to the south, as it cannot infiltrate all of the volumetric water required; that the spill-away is not impactful to any residence, school, commercial or industrial

users; that the proposed facility and the trucks would be located 1,300-ft. away from the school and almost 1,100-ft from the playground of the school; that through the Pipeline and Hazardous Material Safety Administration (PHMSA) and the regulations of the United States Department of Transportation (DOT), they look closely at what potential impact radiuses would be; that when looking at the largest pipe on the site, which is a 10-in. pipe, at a maximum allowable operating pressure of 800-lbs., the impact radius is 200-ft.; that they have positioned the facility, in case something catastrophic did occur within the fenced area, nothing would leave the property limits; that they work very closely with the State Fire Marshal and local fire departments; that there is always an operator on the site at all times, as well as the 24/7 manned operation in Dover; that they have never had a catastrophic event, but the fire departments do know how to handle such an event; that south of the stoned area there is an eight inch main, which runs to the south and leads to the interconnect of four pre-existing lines; that the four lines run out to Rt. 13; that there is a six-inch and ten-inch discharge line which comes out of the existing compressor station; that they propose to tie into both the six-inch and ten-inch lines to naturally feed their gas line systems; that the gas does not go into the compressor station; that the gas is directly injected, at tariff level rates, into the existing mains; that this will serve points south of Sussex County; that there is no process or process piping; that the project is like any other meter regulator station, with the exception this station will accept gas through a virtual pipeline, via truck, rather than a pipeline; that the pipes are generally five to six feet off the ground; that there are one to two elements located in the southwest corner which are eight feet off the ground; that this area is called an up and over; that this allows people to egress quickly without the need to climb over or duck piping; that this area is located 1,000-ft. from any concerning area; that they do have a natural vegetated buffer which does separate the eastern subdivision and the facility; that to the south there is natural vegetation which will not shield the facility from Phillis Wheatley Elementary School, however the distance is so great, it does shield the existing compressor station; that they hold approvals from Sussex Conservation District, United States Fish & Wildlife Service, Delaware State Historic Preservation (SHPO), the Species Conservation and Research Program (SCRIP) of the Delaware Department of Natural Resources (DNREC); that they have prepared their general package to be submitted to the Federal Energy Regulatory Commission (FERC); that they are currently waiting for their local and State approvals; that once they receive approvals and a viable shipper is obtained, they will submit their Application with the Federal Government; that although they have siting authority, they yield towards obtaining all necessary approvals before taking any risks; that the proposed development will not have a substantial impact on physical, economic or social development in the area; that they have selected the proposed location to develop as it minimized the potential for negative environmental or community impacts; that the minimum buffer and facilities are proposed; that the proposed project is smaller in scale compared to the Bridgeville compressor station; that they believe the project fits the character of the site activity which is currently under use; that with the commercial and industrial facilities located on Emma Jane Lane and Miller Metals to the north, the project is in line with the general land use of the area; that there is access to trucking Rt. 404 and the Conditional Use request is for industrial use to be granted for the entire parcel.

Mr. Hopkins questioned if the site operation currently trucked gas to the site and distribute the gas, what a virtual pipeline is and asked if the request was to supplement the gas by truck due to inability to receive enough gas through the pipelines and questioned if the 200-ft. of potential impact radius was the maximum radius.

Ms. Stevenson questioned the location the trucks will be arriving from, if the railroad would be utilized, what hours the trucks would be running, if it proposed to place a new compressor on-site or use an existing compressor and she questioned if the proposed request was related to the biogas facility in Seaford.

Ms. Wingate questioned if Eastern Shore Natural Gas is currently performing the proposed process at any other location or facility

Mr. Parker stated they do not currently bring gas to the site by truck; that everything onsite is subgrade; that the natural gas pipelines come in, then head to the compressor units, which are located within the existing buildings; that the gas is typically compressed for 500-lbs. to 800-lbs., which helps transport the compressed gas, allowing the gas to move through the pipeline to the west and east; that they serve Cambridge and Easton; that in the proposed plan, there are three offload points; that the proposed use could be opportunistic for them during peak seasons; that the proposed use would allow them to bring in compressed natural gas liquefied or renewable natural gases; that they would truck in the gas, to bring those opportunities to the site, rather than attempting to bring the gas down from an interconnect in PA; that a virtual pipeline is also known as a truck; that by supplementing the gas by a truck does create opportunities for them; that they do currently receive gas through the pipeline underground and the request is to supplement the gas additionally by truck; that the impact radius for a ten-inch pipe, at 800-lbs. of pressure, is 196-ft.; that if a person was outside of the impact radius, there would still be some type of percussion but the person would not be located within the blast radius; that the shippers have not yet been determined, therefore the location in which the trucks will arrive is currently unknown; that they found no advantage by rail, as the gas would still be required to off the rail, on load to a truck and off load again at the site; that they are proposing to use Marlin Natural Gas Services, which is part of Chesapeake Utilities Corporation which is where Eastern Shore Natural Gas falls under as a business unit; that it will be their truckers, their known system, and their operator qualified technicians using equipment; that due to not knowing who the shippers will be and their locations, the exact hours the trucks would run is unknown; that hours would mainly be through the daytime, but they are not excluding evenings and night deliveries; that peak hour movements are 7:00 am until 9:00 am and 4:00 pm until 6:00 pm; that DelDOT has not placed a condition on when the trucks can and cannot go; that the trucks would be considered part of the normal flow of traffic; that they are proposing zero to three trucks in a peak hour movement; that this equals to three trucks over a 120-minute window; that there is an existing compressor onsite; that the proposed project, and the request to expand the Conditional Use, will not involve a new compressor; that the proposed project will strictly be injected into the existing pipeline; that the gas is decompressed and comes off the trucks at high pressure, allowing the gas to be directly injected; that the proposed project is not related to the biogas facility in Seaford, that should the biogas facility open in Seaford, they could be a potential receipt point for them; that the proposed project is not based around the biogas facility in Seaford; that they have investigated a location at their existing Hollymount meter and regulator facility, but they have not taken any steps to inject at the location; that Marlin Natural Gas has the history of transporting the gas by truck and they have had no issues in the past.

The Commission found Ms. Maria Payan, on behalf of Sussex Health & Environmental Network, Mr. Greg Layton, on behalf of Delaware Food & Water Watch, with concerns on traffic, the vagueness and lack of details submitted in the Application as to who the chosen drivers will be, the truck route of the drivers, how trucks will park in the bays, the process in the offloading of gas, the lack of a detailed

emergency plan, the safety and potential negative impacts of the children and employees of the school, the percussion zone radius, the compatibility of the project to the Comprehensive Plan and the potential to create a climate catastrophe created by carbon-based fuel, environmental racism and a Traffic Impact Study and PLUS review should be required with an active FERC application.

Ms. Stevenson questioned if there could be an emergency plan set in place with the school be submitted for the Commission to review; that she mentioned her concern of when the trucks would be driving past the school and questioned how it could be avoided.

Mr. Parker stated he will have to check with the safety department to inquire if there is already a plan in place with the existing operating compressor station at the site and they are willing to initiate a safety plan if there is not an existing plan; that they do not anticipate the trucks to drive past the school; that they assumed with DelDOT, the trucks would arrive from the eastern side, mainly from Rt. 13; that DelDOT requested they look at the more heavily trafficked areas; that there was a Traffic Impact Study performed with Miller Metals; that they did look at traffic through that previous TIS lens; that despite being unsure if they will arrive from Rt. 404 or Rt. 13, they looked at the more concentrated area, and found the safety concerns, timing issues and trips generated were not of concern; that it would keep the trucks completely away from Wheatley Elementary; that they did not propose any access off the western side, off of Black Cherry Lane; that all the trucks would come in from Rt. 404; that this keeps them out of residential areas, away from the elementary school, from crossing the railroad tracks; that they utilized the existing roadway corridor to be mindful of safety; that it is no different then a gas truck delivering to a Exxon or Wawa; that the trucks they use are properly valved; that the trucks have shut down components; that the truck drivers are operator qualified; that they are employees of Eastern Shore Natural Gas; that they are willing to place a condition not permitting the trucks to drive pass the school; that the only circumstance it could happen is if a trailer were to get lost; that their goal route is to have the trailers access Emma Jane Lane off of East Newton Rd.; that FERC takes jurisdiction when it comes to environmental and social justice issues; that they also regulate noise and siting authority; that for FERC to grant them the Certificate of Public Convenience (CPCN), which they refer to as a CP Filing, FERC uses the screening justice tool to review applications; that when they made the application to FERC for the Bridgeville compressor station in 2015-2016, the justice tools items were reviewed and analyzed by FERC; that they have made an application with FERC under a Prior Notice Filing to add a compressor unit inside an existing structure; that they are not expanding a facility; that they are placing a unit inside an existing building which was large enough to handle the unit; that this is under a docket with the Federal Energy Regulatory Commission; that the proposed facility is allowing them more opportunities to move adequate gas through their pipelines; that both components play a factor toward their shippers needs; that when they file for the CPCN for the proposed interconnect facility, FERC will address noise and environmental and social justice issues in their dissertation within their research report; that they take the comments seriously and comments made are addressed; that they are attempting to utilize the existing property; that they are trying to avoid taking a lateral through new areas off of Rt. 13 to another property, while potentially disturbing other areas; that they are requesting to make best use of the proposed property; that the reason the project is limited to 18 trucks daily is based off of 6,000 dekatherm (dth) daily for the total inlet capacity; that this is based upon the meters and piping onsite; that a number of 18 trucks would meet the maximum capability of the system; that the only way to allow for more trucks, would be to expand the facility further; that expanding is not their proposal at this time; that when they make an application with FERC for the CPCN, they are required to notify

properties within a one mile radius of the Application; that if a public hearing is required, FERC will provide the opportunity.

Chairman Wheatley stated with a Conditional Use request the Commission has the authority to recommend approval, recommend denial or recommend approval with imposed stipulations and wanted to confirm Mr. Parker was aware what he has stated into record could become Conditionals of Approval.

Mr. Hopkins stated the proposed area is where he grew up; that he feels the perception of the public is similar to downtown Millsboro where there are multiple trucks attempting to get out onto Rt. 113; that this is not the case for the proposed Application; that the trucks have Rt. 404 bypass, around Bridgeville, which enters into East Newton Rd.; that there are many more trucks, turning off, heading into Bridgeville; that the proposed trucks are not going into Bridgeville; that trucks are heading to Perdue's feed mill and the potato mill; that the proposed trucks will only be driving a bit further than those locations to turn into the proposed site; that the only reason a truck driver would make a left-hand turn out of the site, would be in the circumstance of an accident and he wanted to make sure everyone had the proper perspective.

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

In relation to Application C/U 2284 Eastern Shore Natural Gas Company. Motion by Mr. Hopkins, to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Mr. Robertson returned to Chambers.

### **C/U 2285 Ashley DiMichele**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential Zoning District for a tourist home to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.831 acres, more or less.** The property is lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257). 911 Address: 26182 Cave Neck Road, Milton. Tax Parcel: 235-21.00-48.00

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's survey, staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found Ms. Ashley DiMichele spoke on behalf of her Application; that she owns a tiny home; that it is built like a RV; that it is road ready but has more of the comforts of a home; that it is off-grid capable; that it can be plugged up like an RV; that it has a water hose, 50 amp plug in, composting toilet and a grey tank; that the tiny home was originally purchased as a retirement plan, a vacation home, which was capable of being taken offsite or a guest house for visiting family; that she works at a restaurant; that when the COVID-19 pandemic hit, business and income went down; that once things began to open up she desired to make money with the idea of an Air B&B; that the home received more traffic than expected; that she did not realize it was required to update the tourist home, due to her regular home is located on the same property; that their property is near Dog Fish Head

Brewery, McCabe Preserve, Prime Hook and Broadkill Beach and Dewey Beach Beer Company; that she has a lot of visitors from the cities, who are tired of working from their own homes; that these visitors stay to walk the trails, bird watch, go to the beaches; that she limits it to only two visitors at a time; that typically the group of people who stay are very quiet; that at times she has had people stay and never leave the tourist home; that she submitted pictures of the tourist home into the record; that the tourist home is set back from the road; that the tiny home is shielded next to a large magnolia tree, in between the wood line, to help prevent anything objectional to adjacent neighbors; that the home located to the front-left of their property is also a rental home; that any visitor for the tiny home uses her personal driveway; that she also submitted information and specs from the builder of the tiny home and the specs provide information of how the home differs from an RV.

Mr. Whitehouse stated there was a history to this Application; that it had been explored a tourist home can be approved a Special Use Exception before the Sussex County Board of Adjustment; that the definition of a tourist home within the Code specifically prohibits cooking facilities in the individual rental rooms; that there was a lot of discussion on this, but a Conditional Use was decided to be the best path forward; that this could be the first Application the Commission has seen of this nature; that there was further discussion as to whether or not to describe the home as a “tiny home” in the legal advertisements; that tiny home is not currently defined in Sussex County Code which led to the decision to describe the home as a tourist home; that there is a mechanism within the AR-1 Zoning District, if an applicant cannot proceed forward under the permitted uses, the application can come forward as a Conditional Use and the Application began after questions were raised regarding the requirement of a building permit.

Ms. Stevenson questioned if Ms. DiMichele permanently lived onsite, how water is supplied; that she confirmed the home has a compost toilet, and questioned the length of the rental stays and she questioned Mr. Robertson if there should be a limitation to how long visitors could stay.

Mr. Hopkins stated he likes the idea and questioned how the Application came about.

Mr. Robertson questioned how the septic was constructed and stated he is unsure how the County would enforce rental length limitations.

Ms. DiMichele stated a hose hook up is provided for water services; that water is collected in a grey tank; that the kitchen contains a stovetop, refrigerator, and sink; that the home does not contain an oven; that currently, she has a two day stay minimum; that most people stay at least three days to a week; that her goal is not to have a permanent resident for the home; that they were originally under the impression they were not required to obtain a building permit, due to the home being built like an RV by a licensed company; that after the home was placed on-site, they were informed they were required to obtain a building permit and after further investigation it was later ruled she was not required to obtain a building permit

Mr. Phillips confirmed Ms. DiMichele and he worked together to obtain a building permit; that upon further investigation it was decided a building permit was not required for the home and he confirmed with the County Assessment Department the home is not a taxable dwelling unit.



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.

In relation to Application C/U 2285 Ashley DiMichele. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

**C/U 2305 Barnhill Preserve of DE, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a zoological park to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.24 acres, more or less.** The property is lying on the northeast side of Peppers Corner Road (S.C.R. 365), approximately 0.61 mile southeast of Roxanna Road (Route 17). 911 Address: 34215 Peppers Corner Road, Frankford. Tax Parcel 134-15.00-124.00

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, the Applicant's Preliminary Site Plan, DelDOT's Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division, the property deed, zero mail returns, and written responses in opposition, with the responses received after the publishing of the paperless packet were circulated to the Commission.

The Commission found Mr. Tom Ford with Land Design, Inc, spoke on behalf of the Application; that also present was Mr. Joshua Mueller was also present; that the Application is a wildlife education center; that the owner, Mr. Mueller grew up on the property; that the land was originally owned by his parents; that they do seek a Conditional Use across the entire site; that shown on the site plan is a two phase development; that Phase 1 is straight forward on the site plan; that the Applicant is aware a site plan review will be necessary for Phase 2 prior to proceeding into development; that the property is 7.25-acres; that the property has setbacks of 40-ft. from the front, 15-ft. from the side and 20-ft. from the rear; that the property is also encumbered with tax ditch ROW buffer of 50-ft.; that guest attendance is by reservation only; that the maximum number of guests is 25 people at one time; that in Phase 1 they have proposed 20 parking spaces; that it is rare that each guest attends individually; that typically guest arrive as two to three people per vehicle; that there is an additional six spaces for employee parking; that the 20 parking spaces allow for transition of one group not quite leaving and another group arriving; that they feel they have proposed adequate parking for facility; that the site has existing features; that the existing features are the residential home of the owner, a garage, and multiple accessory structures which act as the wildlife habitats, appropriately sized paddocks for adequate movement, exercise and recreation of the wildlife; that stormwater, which is not presently engineered, will be required; that they have an outfall readily available in the tax ditch running through the property; that the Applicant will seek DelDOT entry approvals; that there was no TIS required for the Application; that there are State regulations which require a 8-ft. perimeter fence for this type of operation; that in addition to the paddocks for individual animals, which have different height criteria and openings, it is required a 8-ft. perimeter fence be placed around the access points for the wildlife; that a section of the front yard has been proposed as an area fenced off for the operation and the 8-ft. fence is see-through.

The Commission found Mr. Joshua Mueller spoke on behalf of his Application; that he is the owner of Barnhill Preserve of Delaware; that he is an eagle scout, who was born and raised in Sussex County, Delaware; that his family has owned the subject property since 1996, where he grew up; that he has always had a strong passion to work with animals; that this drove him to get his degree in wildlife ecology at LSU; that while attending college he had the opportunity to work at Barnhill Preserve, at its original location in Ethel, Louisiana, with Mr. John Ligon; that Mr. Ligon is his business partner for the Delaware location; that he felt the preserve would be a great addition to Sussex County; that growing up in the area, there were no options to attend zoos, other than the Salisbury Zoo and Brandywine Zoo, which are a far distance to travel; that there was little opportunity to learn about the wildlife around the world; that the main mission at Barnhill Preserve is to educate youth and adults about the conservation and multiple animals on the planet; that in 2020 Barnhill Preserve helped fundraise over \$75,000 for the Australian wildlife during the bush fires; that he, and three of his staff members, spent a month in Australia helping rescue, providing care and providing food to the animals; that Barnhill Preserve has raised over \$15,000 for the Costa Rican wildlife just this year; that the Barnhill Preserve mobile unit visits schools all over the Northeast; that they generally educate about 300,000 children every year; that they average education for 8,000 children per week; that they have three crews; that each crew goes to a different state; that he currently has employee crews in Ohio and Pennsylvania; that these education programs are free for the schools; that they strive to provide everyone access to learning about the animals; that the current facility has provided the chance to educate the local community, as well as inspire people to take action in helping the animals; that some of the animals he cares for are listed as threatened or endangered in the wild; that they can offer breeding programs to help increase the population, which help prolong the species; that they worked hard to receive the highest level of licensing provided by the United States Department of Agriculture; that Barnhill Preserve is considered a Class C Exhibitor; that this license allows them to be at the same level as every zoo in the nation; that they are randomly inspected annually; that the past year they were awarded a three year inspection; that this reflects the trust they have in Barnhill to not require an inspection for three years from their last inspection in October 2021; that he worked with the State of Delaware to receive an exhibitor license; that this permits him to be able to exhibit in the State of Delaware; that he also has exhibitor licenses in Florida, Kentucky, New Jersey, Maryland and Georgia; that they do exhibit in other states, which do not require a license; that they started the zoological process for accreditation with the Zoological Association of America (ZAA); that within the Code for Delaware, Association of Zoos and Aquariums (AZA) is the requirement; that they have work with the State of Delaware and the Department of Agriculture to include ZAA as an exception, as it meets more of their specific needs and beliefs with the animals; that the animals still have a very high level of care required; that in this high level of care, they discussed the required eight foot fence; that they require the eight foot fence; that the United States Department of Agriculture (USDA) recommends it to ensure the safety of the community and animals; that animals of high risk, such as their Eurasian Lynx, are required to have roof enclosures to ensure the animal cannot escape; that their first priority is the well being of the animals; that they do have a zoological vet who visits the site monthly; that the vet performs a full inspection of every animal to ensure every animal is healthy; that they also work very closely with Dr. Michael Metzler, who provides any treatments required when their zoological vet is out of the state; that their zoological vet is available by phone 24/7 to provide assistance or instruction to Dr. Metzler; that Dr. Metzler does not have expertise in the zoological field, but does have the background and supplies to provide care to the animals; that they have a zoological nutritionist; that diets are tailored to the particular species, as well as, to the specific animal's weight, preferred foods and activity level; that they have continued to update and improve the

animal enclosures to provide optimal chances of enrichment; that all of his staff have degrees in biology or have comparable experience; that 11 professionals on the team have received extensive training to ensure they are equipped to work with the animals at Barnhill Preserve; that with a combined 16 years of experience, between Mr. John Ligon and himself, they have developed protocols to make it easier and safer to care for their animals; that he has worked with Delaware regarding the Nutrient Waste Management Plan; that due to not exceeding 8,000-lbs in animals, they are not required to have a plan in place; that they chose to match the Georgetown SPCA protocols, they bag animals waste, dispose of the waste with a locally approved waste management service; that they have proposed a manure barn in the case they should exceed the 8,000-lb. requirement in the future; that they desire to already have a plan in place; that he lives on the property; that he is available 24/7 for emergencies or should his staff need assistance; that he was recently elected on the Board of Directors to Prestigious U.S. Based Nonprofit, who rescues and rehabilitate wildlife in Costa Rica; that it is his desire to continue to share his love for animals with the community; that visitors from the area, as well as visitors from out of state have benefitted from Barnhill Preserve in the short amount of time it has been open to the public; that there have been multiple reviews of a positive experience at Barnhill Preserve; that Mr. Brian Jones is a neighbor located across the street from Barnhill Preserve; that at first Mr. Jones had reserves about the project; that after some discussion, he was able to put Mr. Jones' concerns at ease; that Mr. Jones did write a letter in support, which Mr. Mueller submitted into the record; that he has no intention to build a massive zoo; that he desires to create a more personal experience through guided and educational tours; that all groups are small, maxing at 25 guest at a time; that the tours are led by a personal guide providing education on the animals; that with their unique encounters, they provide a stronger connection for guests and assist them with daily animal enrichment; that they are developing a program to allow schools to visit the facility for field trips; that they are designing a Junior Keeper program, allowing kids to shadow the animal caretakers during the summer time; that they will continue to offer their educational presentations all over the east coast and northeast; that the animals are no more vocal than any other traditional agricultural animal; that they have been very considerate with their hours of operations; that they are open from April until Christmas, with limited hours in the colder seasons; that the first Kangaroo yoga session begins at 7:00 am and is a very quiet and peaceful event; that tours of the facility begin at 10:00 am and the last tour ending at 7:00 pm; that they did host later events in the summer, but never exceed 9:00 pm in hopes to avoid creating any light pollution or nuisance to the neighbors; that they are currently in the process of working with the Ultra Solar Group, in hopes to have the facility run off of 100% green energy and he hopes the Commission can see his passion and how much of an asset the facility is to the community.

Mr. Mueller read multiple reviews regarding his current operation at the site.

Chairman Wheatley questioned what Kangaroo Yoga is.

Ms. Wingate stated she can see the passion Mr. Mueller has for the animals; that she feels the project is a great idea; that it is a great opportunity for the children and adults; that she did make a visit to the site; that she questioned the hours of operation; that she questioned if there would be any outdoor music or other noises and she questioned if Mr. Mueller could speak to the complaint letter written regarding an animal which had escaped from the property.

Mr. Mears questioned if the need for an eight-foot fence would require a variance approval from the Board of Adjustment.

Mr. Whitehouse stated they did identify the requirement for a variance to the fence height during the pre-application stage.

Ms. Stevenson questioned if the site was considered agricultural use other than the guest visiting the site if this was the reason for the Conditional Use requirement and if parking was proposed within the front yard setback.

Mr. Whitehouse stated the use is not specifically called out as a permitted use, which required Conditional Use.

Mr. Hopkins stated he feels it is a great service to the community; that he questioned if the guest pay admission and if the proposed use is self-sustaining or if it will rely on contributions.

Mr. Mueller stated kangaroo yoga first began as an idea to help raise money for the bush fires in Australia; that they partnered up with local yoga studios, who hosted these events inside their studios; that this idea worked for a while, but became more difficult as the kangaroos became bigger; that the kangaroos became too large to do this by the summer of 2020; that they have a large paddock for the kangaroos; that they allow guest to come inside the paddock area and set up their yoga mat; that they place food bowls around the paddock to help encourage the kangaroos to be more active with the guests; that every experience is different; they have had multiple guests return for multiple sessions; that the event is good for all ages; that they do kangaroo yoga, paint night with sloths, sipping Salted Vines wine with sloths, encounter tours and otter swims, that 7:00 am is when the first yoga session begins; that they encourage guest to arrive 15 minutes early to allow for check in; that no event has ever gone past 9:00 pm; that the only outdoor music is played from a few small speakers during yoga sessions; that the music is never at high decibels as they do not wish to disturb the animals; that they work with the State of Delaware, who is aware of every animal they bring in the state; that the animal which was found off the site did not belong to Barnhill Preserve; that it was an agouti, which is a South American rodent; that agoutis are considered a delicacy for some people; that all of his animals are registered; that his hope was to do agritourism; that agritourism seemed a bit too out-of-the-box due to the hours they chose; that they do have several different options for guest to attend; that every experience, other than kangaroo yoga, begins with a animal show; that with just the purchase of an animal show, guest can build their own experience; that currently a lot of the animals are located indoors where the public cannot see the animals without the caretakers bringing the animals out; that the proposed site plan will allow guests to view more of the animals; that the proposed use will rely on the ticket prices for the guest attending; that he feels very confident Barnhill Preserve can sustain, especially with the Louisiana location; that ticket prices are a bit higher than a traditional zoo, but they are providing a unique experience; that they desired to obtain a few variances due to the nature of the property; that the parking shown in the setbacks is proposed for school buses; that there are limits to how much of the property they can use due to the tax ditch and unique shape of the property and currently they are land locked from the back property.

Ms. Wingate stated she felt if buses were coming to the property, they would most likely not need the regular parking for regular vehicles, as they are not proposing many guests at the same time.

Chairman Wheatley stated the site plan issues can be discussed and solved with Mr. Mueller's site plan professional.

Mr. Whitehouse stated Mr. Ford is exploring bridging across the tax ditch to the future expansion area.

The Commission found Ms. Barbara Pickholtz spoke by teleconference in opposition to the Application with concerns of the use of a commercial zoo in a residential area, noise, traffic, waste management, negative impacts to the environment and nearby residents, and the safety of the animals.

Ms. Stevenson stated the property is AR-1 and questioned if Mr. Mueller would be permitted to place chicken houses and hogs on the property.

Mr. Whitehouse stated chicken houses and hogs are permitted in AR-1 subject to the setbacks of the property.

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

In relation to Application C/U 2305 Barnhill Preserve of DE, LLC. Motion by Ms. Wingate, to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

**ADDITIONAL BUSINESS**

Mr. Hopkins mentioned he would like to discuss, in the future, the requirements of a garage/studio apartment and kitchen facilities in additional structures.

Chairman Wheatley stated the opportunity may have to take place as a workshop; that they may need to request Mr. Whitehouse or counsel to choose two or three topics for discussion at a future public meeting.

Ms. Stevenson stated she agreed and would also like to discuss future changes to Ordinances.

Mr. Whitehouse stated he is working on the joint bus tour with County Council; that he suggested a Wednesday which would avoid Tuesday and Thursdays, which are meeting days; he would propose to have the tour in the next few months, and he introduced Mr. Michael Lowrey, who recently joined the Planning & Zoning Department as a Planner III.

**Meeting adjourned at 9:05 p.m.**

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