

THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 11, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday afternoon, February 11, 2021 in Room 540, Carter Partnership Center, Delaware Technical Community College, 21179 College Drive, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears - Absent, with Mr. James Sharp – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christen Scott – Planner I and Mr. Nicholas Torrance – Planner I.

Mr. Sharp explained how the meeting would be conducted at this location.

Mr. Whitehouse noted that there were no changes to the Agenda. Motion by Ms. Wingate seconded by Mr. Hopkins and carried unanimously to approve the Agenda. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of the January 7, 2021 Planning and Zoning Commission meeting as revised. Motion carried 4-0.

OTHER BUSINESS

Anchors Run (2018-13)

Revised Final Subdivision Plan

This is a Revised Final Subdivision Plan for the creation of a major cluster subdivision to consist of 265 single-family lots and other ancillary works on a 132.71-acre parcel of land accessed from Beaver Dam Road (S.C.R. 23). The property is located on the east side of Beaver Dam Road (S.C.R. 23). Final Subdivision Plan approval was granted by the Commission at its meeting of December 19, 2019. The changes include minor revisions to lot widths to better fit proposed house models, changes to the size of the formerly proposed stormwater management ponds and adding Open Space between Lots 167 and 168. The density remains unchanged. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Staff are in receipt of all agency approvals. Tax Parcel: 234-6.00-19.00 & 20.01. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Final Subdivision Plan with a condition that the connector road shown on the site plan be paved. Motion carried 4-0.

Ocean Meadows Amenities Plan

Amenities Plan

This is a Preliminary Amenities Plan for the Ocean Meadows subdivision (2018-28) which proposes a 2,518 square foot clubhouse, a pool, fencing, and twenty (20) parking spaces to be located off Heritage Road. Additionally, a landscaping plan for the property is included. This Preliminary Amenities Plan complies with the Sussex County Zoning Code and the Approved Conditions for the Subdivision. is eligible for preliminary and final approvals. Tax Parcel: 234-2.00-2.03. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Amenities Plan as a preliminary and final. Motion carried 4-0.

Roxana Apartments (S-20-32)

Preliminary Site Plan

This is a Preliminary Site Plan for 125 multi-family apartment community. The community will consist of 6, 14,101 square foot buildings, a 4,750 square foot community center, a community pool, dog park, 274 parking spaces and other site improvements to be located on Roxana Road. Roxana Apartments attended PLUS on June 24th, 2020 and all comments dated July 23rd, 2020 have been addressed. Additionally, an Environmental Assessment and Public Facility Evaluation Report dated September 15th, 2020 has been supplied and all documents are provided with the electronic packet. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 134-12.00-330.00. Zoning: C-1 (General Commercial). Staff at awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 4-0.

Mission Gospel Family of God Inc (S-19-43)

Preliminary Site Plan

This is a Preliminary Site Plan to convert an existing one-story building with a 950 square ft addition to a church with 35 parking spaces and other site improvements to be located off Cokesbury Rd (S.C.R. 529). This Preliminary Site Plan complies with the Sussex County Zoning Code and is eligible for Final Site Plan approval. Tax Parcel: 231-10.00-17.00. Zoning: GR (General Residential). Staff are in receipt of all agency approvals.

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

Camp Arrowhead – Dining Hall Addition

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a 1-story 10,328 square foot Dining Hall and Kitchen. The site is located off Camp Arrowhead Road, within the Camp Arrowhead Campground on Teamwork Trail. Camp Arrowhead Campground is an existing non-conforming use of the property. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-18.00-42.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the Revised Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 4-0.

Americana Bayside MR-RPC – Freeman Arts Pavilion

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a 1,010-seat arts pavilion, including 876 parking spaces, and other related uses on a parcel consisting of 8.98 acres. The site is located on the south side of Signature Boulevard within the existing Americana Bayside development. At their meeting of Thursday, March 12, 2020, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the performing arts pavilion. Due to the current COVID-19 pandemic, the Freeman Stage had to significantly alter their plans for the 2020 season. Seats were previously sold in “pods” of four, with each pod maintaining the required 6-ft of separation distance. However, this option can only

accommodate 400 patrons total and for this reason is unsustainable in the long term. To both address the need to accommodate additional patrons under the current Governor's Orders and CDC guidelines and ensure the success of the Freeman Stage, GMB has proposed a phasing plan which would allow for maintaining the same number of patrons as the existing stage could accommodate while the new stage is being constructed. The plan is called "Phase 1A" and has been added to the plans as "Phase 1A Temporary Site Plan." The Final Site Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 533-19.00-36.01, 864.00, 866.00, 881.00 and 990.00. Zoning: MR-RPC (Medium Density Residential, Residential Planned Community.) Staff are in receipt of all approvals and the Site Plan is therefore eligible for consideration as a Final Site Plan.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried to approve the Revised Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 3-0. Ms. Wingate abstained.

Lands of Richard K. & Joan E. Wilson

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off a proposed 50-foot wide access easement. Lot 1 shall measure 6.930 acre +/- and the residual lands shall measure 32.73 acres +/- . The property is located on the north west side of Bethel Concord Rd. (S.C.R. 485) and it does not exist within any County Transportation Improvement District. This Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. 911 Address: 26826 Bethel Concord Rd., Seaford. Tax Parcel: 132-7.00-54.00. Zoning: AR-1 (Agricultural Residential District) & C-1 (General Commercial District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval by staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of CNSEE, LLC & Charles G. & Patricia A. Wagner

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off an existing 50-foot wide access easement. Lot 1 shall measure 0.75 acre +/-, Lot 2 shall measure 1.054 acres +/- and the residual lands shall measure 7.40 acres +/- . The property is located on the eastern side of Cedar Neck Road (Rd. 206), and it does not exist within any County Transportation Improvement District. This Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. 911 Address: 690 3 & 6509 Cedar Neck Road, Milford. Tax Parcels: 330-11.00-73.01 & 73.03. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval by staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Mitchell

Minor Subdivision off a 14-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off a proposed 14-foot wide access easement that is sixty (60) feet in length. The proposed lot will measure 1.51 acres +/-, and the residual land will measure 2.80 acres, +/- . The property is located on the western side of Whaley's Road (S.C.R. 62), and it does not exist within any County Transportation Improvement District. This Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and is eligible for

preliminary and final approvals. 911 Address: 34894 Whaley's Road, Laurel. Tax Parcel: 332-10.00-11.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals and therefore the plan is eligible for approval as a Final Subdivision Plan.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Minor Subdivision off a 14' easement as a final. Motion carried 4-0.

OLD BUSINESS

Ord. 20-07 - Future Land Use Map

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 29.01 & 235-14.00-570.00

The Commission discussed this application which has been deferred since January 21, 2021.

Mr. Whitehouse announced that two comments have been received and have been circulated to Commission members.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to close the record. Motion carried 4 – 0.

C/Z 1923 Reed Farms, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 67.31 acres, more or less. The property is lying on the west side of Gravel Hill Rd. (Rt. 30) approximately 309 feet south of Milton-Ellendale Hwy. (Rt. 16). 911 Address: 14888, 14866. & 14742 Gravel Hill Rd., Milton. Tax Parcels: 235-13.00-29.00, 29.01 & 235-14.00-570.00

There was no action taken on this application which had been deferred at the meeting of December 17, 2020.

C/U 2201 - Sun Leisure Point Resort, LLC (Pine Acres, Inc.)

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a campground to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.0 acres, more or less. The property is lying on the south side of Dogwood Lane approximately 305 feet south of Radie Kay Lane, approximately 0.29 mile northeast of Long Neck Road. 911 Address: 25491 Dogwood Lane, Millsboro. Tax Parcels: 234-24.00-39.02 and 39.06.

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Wingate moved that the Commission recommend approval of C/U 2201 for **Sun Leisure Point Resort, LLC** for a Conditional Use of land in an AR-1 Agricultural Residential District for a campground based upon the record made during the public hearing and for the following reasons:

1. This application seeks to add 58 additional campsites to the existing legally non-conforming Leisure Point campground. These additional 58 units will be situated on 8 acres.

2. This conditional use is for the expansion to the existing Leisure Point campground/resort to provide additional lodging opportunities for RV and camping visitors to Sussex County and its beach and bay areas, which is a vital part of Sussex County's tourism industry.
3. The use is consistent with other existing uses in the area, including the existing Leisure Point camping facility. There are a number of similar manufactured home or RV communities, including 4 with campgrounds. There are also nearby C-1 properties.
4. The Comprehensive Plan identifies this site as part of the Coastal Area, which is recognized as a development or growth area on the Future Land Use Map.
5. The development is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area.
6. This expanded camping and RV area will be accessed through the existing gated entrance to Leisure Point via Radie Kay Lane.
7. The proposed conditional use will not adversely affect the congestion of roads or streets as confirmed by DelDOT. In accordance with the MOU between Sussex County and DelDOT, the campground would only have a "negligible" impact on area roadways and a TIS is not required. Access will be via Radie Kay Lane from Long Neck Road, which DelDOT has designated as a "Major Collector".
8. There will be no negative impact on schools or other similar public facilities since the expanded camping and RV area will only be used for transient visitors.
9. The Long Neck Water Company will provide water service to the expansion area.
10. Sussex County will provide central sewer service to the expansion area.
11. By written decision of the Board of Adjustment dated August 17, 2020 in Case Number 12428, the Sussex County Board of Adjustment granted a 266-foot variance from the 400-foot separation distance required for the manufactured homes on Sussex County Tax Parcels 234-24.00 39.07 and 39.08.
12. With the variance, the expansion area complies with the requirements of Section 115-172.H of the Sussex County Zoning Code for the approval, design and operation of campgrounds.
13. The proposed use is beneficial and desirable for the general convenience and welfare of Sussex County and its residents and visitors since it will provide tourism and related services, economic growth in a designated development area, full and part-time employment opportunities, and significant economic benefits to area businesses.
14. This recommendation is subject to the following conditions:
 - a. There shall be no more than 58 camping or RV sites within this conditional use area. No more than 6 guests shall be permitted per site.
 - b. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT.
 - c. The campground shall be connected to Sussex County's central sewer system.
 - d. The campground shall be connected to a central water system for domestic use and fire protection.
 - e. Stormwater Management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - f. This expansion area shall be surrounded by a 50-foot-wide landscaped buffer.
 - g. Each campsite shall be permitted to have one accessory building of no more than 64 square feet with a maximum height of 10 feet. The accessory buildings shall be of uniform design and size.

- h. Campground restrictions shall be submitted as part of the site plan review. These shall include “Quiet Hours” between 11:00 pm and 7:00 am each day.
- i. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.
- j. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.
- k. The Applicant shall identify all “dwellings” in the vicinity of the property that require a 400-foot buffer pursuant to Section 115-172.H(3) of the Sussex County Code. Except for the dwellings that are the subject of the approved variance in Board of Adjustment Case Number 12428, all campsites and cabins shall be a minimum of 400 feet from any dwelling that exists at the time of Final Site Plan approval.
- l. All campsites must be 2000 square feet in size and at least 40 feet wide.
- m. No cabin or campsite shall have direct access to any road outside of the boundaries of the campground. Access to the campground shall be gated and restricted so that the only access shall be from Radie Kay Lane.
- n. There shall be no sales of campsites or camping units, including park models, RVs, travel trailers or cabins.
- o. This expanded camping area shall comply with all of the requirements of Section 115-172.H, with the exception of the variance approved in Board of Adjustment Case Number 12428.
- p. No entertainment or similar organized activities shall be permitted in this expansion area of the campground.
- q. The Final Site Plan shall include the conditions established by this Conditional Use No. 2208 and by Board of Adjustment Case Number 12428.
- r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2201 Sun Leisure Point Resort, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

2020-11 - Cardinal Grove

A cluster subdivision to divide 49.04 acres +/- into 98 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred and a portion within Lewes and Rehoboth Hundred, Sussex County. The property is lying on the west side of Beaver Dam Road (Route 23), approximately 0.31 mile south of Fisher Road (S.C.R. 262). Tax Parcel: 234-2.00-1.10. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Stevenson moved that the Commission approve 2020-11 – Cardinal Grove Subdivision based upon the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District.
- 2. The subdivision will have no more than 98 lots on 49.04 acres. This density does not exceed the maximum density that is permitted in the AR-1 zone.
- 3. All lots will be at least 7,500 square feet in size.

4. The subdivision is in the vicinity of other similar developments including Heron Bay, Ridings at Rehoboth, Oak Crest Farm and Coastal Club.
5. Based upon the record and with the conditions of approval this subdivision will not have an adverse impact on the neighboring properties or area roadways.
6. The proposed subdivision meets the purpose and standards of the Subdivision Code and the applicant has addressed the requirements of Section 99-9.C of the Code.
7. The subdivision has a design that is superior to a standard subdivision. The homes and amenities are clustered on the most environmentally suitable portions of the site and avoid wetlands and waterways. The Applicant has stated that there will be extensive tree preservation on the site, with 11.25 acres of existing trees preserved. The design also exceeds the open space requirements, with approximately 14.7 acres of open space required and 26.1 acres of open space provided. This includes approximately 19.9 acres of contiguous open space.
8. The project will be served by a central water system.
9. Sussex County will provide central sewer to the project.
10. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
11. This preliminary approval is subject to the following:
 - a. There shall be no more than 98 lots within the subdivision.
 - b. The developer shall establish a homeowners association responsible for the maintenance of streets, buffers, stormwater management facilities and other common areas.
 - c. The proposed stormwater management pond shall be relocated from where it is shown at the northeast corner of the site on the preliminary site plan. According to DNREC, the stormwater management pond is proposed within an area of hydric soils which “is not considered an environmentally acceptable practice by DNREC and will likely increase the potential for future flooding impacts...”. The stormwater management pond shall not be located within the area of hydric soils identified as “Hammonton Sandy Loam” and “Longmarsh and Indiantown Soils” in the USDA Report dated December 18, 2020. No other improvements shall be constructed in this area, either.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - e. There shall be a 30-foot buffer installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation as much as possible with limited disturbance.
 - f. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - g. Street design shall meet or exceed Sussex County standards.
 - h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - i. Construction, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Saturday.
 - j. The Applicant shall coordinate with the local school district regarding the location of a school bus stop. The location and details of this area shall be shown on the Final Site Plan.
 - k. The development shall be served by its own on-site amenities including a pool and pool house.
 - l. All amenities shall be completed and open for use prior to the issuance of the 45th residential building permit.
 - m. As stated by the Applicant, at least 11.25 acres of existing forest shall be preserved. The Final Site Plan shall depict all forested areas that will be preserved.

- n. Approximately 4.7 acres of wetlands have been delineated on the site. As stated by the Applicant, there shall be a 25-foot buffer from all non-tidal wetlands and a 50-foot buffer from Bundick's Branch.
- o. There shall be sidewalks on at least one side of all streets and the sidewalk system shall connect with DelDOT's multi-modal path.
- p. The Final Site Plan and the recorded Restrictive Covenants for this development shall include the Agricultural Use Protection Notice.
- q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to grant approval for the reasons and conditions stated in the Motion. Motion carried 4-0.

C/Z 1891 - Chappell Farm, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 6.4 acres, more or less.

The property is lying on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road. 911 Address: 30511 Cave Neck Road, Milton. Tax Parcel: 235-23.00-1.02 (portion of).

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1891 for **Chappell Farm, LLC** for a change in zone from AR-1 Agricultural Residential District to a MR Medium Density Residential District based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available. Also, this site is the location of a grade separated intersection, (or overpass) that is being constructed by DelDOT with on-ramps and off-ramps. This will be one of the first grade-separated intersections in Sussex County. This grade separated intersection gives this location an urban character. Given its location adjacent to this interchange, MR zoning is appropriate for this property.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The property is adjacent to a property that has C-1 zoning and there are other commercially zoned properties across Cave Neck Road from this site. In the case of the C-1 zoning a wide variety of commercial uses are permitted and that District also allows residential development of up to 12 units an acre. There is also extensive MR next to this property and across Cave Neck Road from this property. This rezoning is consistent with other zoning and land uses in the area.
5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
6. For all of these reasons, MR zoning is appropriate for this site.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1891 Chappell Farm, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/Z 1892 - Chappell Farm, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 8.53 acres, more or less. The property is lying on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road. 911 Address: 30511 Cave Neck Road, Milton. Tax Parcel: 235-23.00-1.02 (portion of).

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1892 for **Chappell Farm, LLC** for a change in zone from AR-1 Agricultural Residential District to a C-3 Heavy Commercial District based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
2. The site has frontage along Route 1 at a location that is next to existing C-1 property with various commercial uses. It is also across Cave Neck Road from other commercially zoned properties. This location is appropriate for this type of zoning.
3. This site has a history of commercial uses. Ordinance #2158 approved a conditional use for a country market at this location.
4. This site is the location of a grade separated intersection (or overpass) that is being constructed by DelDOT with on-ramps and off-ramps. Given its location adjacent to this interchange, commercial zoning, including C-3 Zoning, is appropriate for this property.
5. This C-3 district is intended to be integrated into a mixed-use community that will include Multi-family residential units. The C-3 zoning will permit uses that are beneficial to the residential units that are part of this development as well as traffic from Route 1.
6. There has been significant residential development in this area of Cave Neck Road. Adding nearby convenient uses permitted in the C-3 zone will eliminate trips from these residential developments to either Lewes or Milton for shopping needs.
7. The site will be served by central water and Sussex County sewer.
8. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. C-3 zoning is appropriate in these Areas according to the Plan.
9. The proposed rezoning meets the general purposes of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
10. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to recommend approval of C/Z 1892 Chappell Farm, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2193 Chappell Farm, LLC

An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family (128 units) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 6.4 acres, more or less. The property is lying on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road. 911 Address: 30511 Cave Neck Road, Milton. Tax Parcel: 235-23.00-1.02 (portion of).

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Stevenson moved that the Commission recommend approval of C/U 2193 for **Chappell Farm, LLC** for a Conditional Use of land in a MR Medium Density Residential District for multi-family apartment units (128 units) based upon the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 128 multi-family apartments.
2. The property is in an area where a variety of development has occurred. There is a nearby MR-RPC with multi-family residential development. There is adjacent C-1 property that permits 12 dwelling units per acre. There are other nearby commercial zonings and uses in the area. This project is consistent with these nearby uses.
3. This multi-family development will be part of a mixed-use project on this site that will include commercial uses that will benefit the residents on the site as well as others in the nearby Cave Neck Road area.
4. The site is the location of a grade separated intersection, (or overpass) that is being constructed by DelDOT with on-ramps and off-ramps. This will be one of only a few grade-separated intersections in Sussex County which gives this location an urban character. Given the location adjacent to this interchange, multi-family dwellings as part of a mixed-use development are appropriate.
5. There is a need for apartment units for the workforce in eastern Sussex County. This multi-family apartment development will be in a convenient location for the nearby employment centers in Lewes, Rehoboth, Milton and even the Bayhealth center south of Milford.
6. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” and medium and higher densities are acceptable when a site is near commercial uses, is “along a main road or at/near a commercial intersection”, is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
7. The proposed development will not have an adverse impact on the neighboring properties or community.
8. The site plan proposed gated interconnectivity with the adjacent residential development, which will eliminate an entrance directly from Route One and divert that traffic to the new Route One interchange.
9. The project will not have an adverse impact upon traffic or roadways. The developer will be required to contribute to area road improvements, including the Route One interchange and other road improvements in the area.
10. There was a question raised about the number of units referenced in the TIS, which was less than the number of units in this application. A representative of DelDOT confirmed that this difference does not create a significant difference in DelDOT’s analysis of the project. However, it may impact the road improvements or financial contributions that the developer will be

required to make as this project is developed- the type of adjustments that occur in any type of development as the development plans are finalized.

11. The Level of Service of nearby roadways and intersections will not be significantly adversely affected by this development. The current at-grade intersection of Cave Neck Road and Route One is on track to be substantially improved by creating an overpass with on- and off- ramps. The Red Fox Run intersection with Route One will be eliminated and replaced with much safer interconnectivity through this development to Cave Neck Road. This developer will also be required to make substantial contribution to other nearby roadway improvements to offset any impacts of this development.
12. The development will be served by central sewer.
13. The development will be served by central water.
14. This recommendation is subject to the following conditions:
 - a. The maximum number of residential units shall be 128.
 - b. The Applicant or its successor, as Landlord shall be responsible for the perpetual maintenance of the development's roadway, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - c. All entrance, intersection, roadway and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.
 - d. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
 - e. The project shall be served by central water to provide drinking water and fire protection.
 - f. There shall be a vegetated or forested buffer of at least 40 feet in depth. This shall include existing vegetation that shall be expanded to include varying landscape stock, including trees that are at least 1.5-inch caliper at 5 feet of height and shrubs of 5-gallon minimum size. As proposed by the developer, there shall also be a privacy fence along the common property line with Red Fox Run. All of this shall be shown within a landscape plan included as part of the Final Site Plan for the project.
 - g. Construction activities, including site work and deliveries, shall only occur between 7:30 am and 7:00 pm Monday through Friday, and between 8:00 am and 2:00 pm on Saturdays. There shall be no construction activities at the site on Sundays.
 - h. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
 - i. The Final Site Plan shall contain the approval of the Sussex County Conversation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - j. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.
 - k. The interior street design shall meet or exceed Sussex County's street design requirements.
 - l. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.
 - m. Recreational amenities shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family building.
 - n. A Certificate of Occupancy will not be issued for Commercial Use Buildings until the completion of the construction of the Overpass.
 - o. 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 of C/U 2193 Chappell Farm, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

PUBLIC HEARINGS

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

2021-07 – Carsyljan Acres

A standard subdivision to divide 0.58 acre +/- into 2 lots within the Carsyljan Acres Subdivision to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the northeast side of Brohawn Ave., approximately 0.11-mile northeast of Sweetbriar Rd. (S.C.R. 261). Tax Parcel: 235-27.00-94.00. Zoning District: GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's subdivision Plan and comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that the Office of Planning and Zoning received letters of no objection to the Application representing 51% of the occupiers within the subdivision and zero comments following the notice to neighbors.

The Commission found that Ms. Jennifer Knighton was present on behalf of her Application, that she and a friend have owned the property since 2006; that they would like to subdivide the property so that they would each have a separate dwelling; that she wishes to make this her full-time residence within the next 12-months; and that more than 51% of her neighbors support the request.

Ms. Knighton also thanked Ms. Christin Scott from the Planning and Zoning Office for her assistance during this process.

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

Prior to the recess, the Commission discussed 2021-07 Carsyljan Acres.

Ms. Stevenson moved that the Commission approve 2021-07 – Carsyljan Acres Subdivision based upon the record made during the public hearing and for the following reasons:

1. This application seeks to re-subdivide an existing lot into two separate lots in the Carsyljan Acres subdivision. Carsyljan Acres is a subdivision that has been in existence for decades. Other lots appear to have been re-subdivided like this one over the years and these two lots will be consistent in size and shape to others within the development.
2. At least 51% of the other lot owners within Carsyljan Acres have consented to this re-subdivision.
3. The subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
4. The property is zoned GR and these lots conform with the area requirements of the GR district.
5. The subdivision will be consistent with the area and will not adversely affect nearby uses or property values.

6. The subdivision will not adversely impact schools, public buildings and community facilities.
7. This subdivision complies with Section 99-9.C of the Subdivision Code.
8. The proposed subdivision will not adversely affect traffic on area roadways.
9. Because all agency approvals have been obtained, it is appropriate to grant both Preliminary and Final Site Plan approval for this subdivision. Therefore, no conditions of approval are required.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to grant approval for the subdivision and to grant approval for the preliminary and final site plan for the reasons stated in the Motion. Motion carried 4-0.

2019-30 Pelican Point 4-5

A cluster subdivision to divide 109.99 acres +/- into 219 single family lots to be located within Pelican Point 2-5 subdivision on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the south and east sides of Townsend Rd. (S.C.R 303), approximately 750 ft. south of Harmons Hill Rd. (S.C.R. 302) and accessed off of Pelican Point Blvd. approximately 380 ft. west of Cannon Rd. (S.C.R 307). Tax Parcel: 234-16.00-21.03, 21.07, 23.01 and 234-16.00-1509.00 through 1697.00. Zoning District: AR-1 (Agricultural Residential District)

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Subdivision Plan, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's exhibit book, copy of TAC comments, including the Fire Marshall's comments, Division of Public Health comments, US Department of Natural Resources comments, a copy of the staff review letter, a copy of the 2008 PLUS comments for the original subdivision. Mr. Whitehouse noted that the Office of Planning and Zoning received 16 letters in response and a response from DelDOT which were received after 5:00 pm yesterday and are not part of the online packet, paper copies have been distributed to Commission members.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Cannon Road, LLC; that Mr. Hutt stated that Cannon Road, LLC is both the Applicant and the owner of the property; that also present on behalf of the Application are the principals and employees of Cannon Road, Mr. Randy Mitchell, Mr. Mark Handler, Mr. Rob Allen and Mr. Jim Eriksen, Professional Engineer with Solutions IPEM; that this Application consists of approximately 110 acres and 192 tax parcels; that the high number of tax parcels involved are because this is a resubdivision of an existing approved cluster subdivision; that the properties in this Application are located behind the existing portion of the Pelican Point community; that the property is located on the west side of Indian Mission Road (Route 5); that there are other subdivisions in the area including Independence, Weatherby, Stone Water Creek and the Baywood Communities; that there is already an approved cluster subdivision for phases 4 and 5 of Pelican Point which was approved for 189 units; that the Application before the Commission is for 219 units which is an addition of 30 units; that in 2019 Sussex County approached Cannon Road, LLC for consideration of a land swap between other lands owned by Cannon Road, LLC and lands of the County; that Cannon Road, LLC acquired 15 acres which is adjacent to the existing Pelican Point Phase 5; that the purpose of this Application is to incorporate the 15 acres into Phases 4 and 5; that no units will be proposed in the additional 15 acres but instead some existing features such as storm water ponds will be moved from the existing phase 5 to this area; that an additional amenity of a dog park including seven parking spaces will be added to this area; that the new 30 units will be within the existing phase 5; that there was a

previous subdivision application for those fifteen acres which has since sunsetted; that other than adding 30 units and moving storm water ponds the subdivision will remain largely the same as the original approved phase 4 and 5; that the land is zoned AR-1; that they are in the low-density area according to the Future Land Use Map of the 2019 Comprehensive Plan; that they are all in Level 4 investment area of the State Strategies Maps; that there are no flood plains or wetlands on the property; that there are no historical sites or endangered species on the property; that public water and sewer are available for this property; that there are restrictive covenants for the first three phases of Pelican Point that will apply to phases 4 and 5; that there will be sidewalks on both sides of the streets within the subdivision; that there will be street lights; that phase 4 and 5 will meet the requirements of cluster subdivisions; that there will be minimal changes to phase 4; that most of the changes presented affect phase 5; that the revised plan increase open space to 40%; that the average lot sizes will be slightly over 10,000 sf; that there will be an addition of a dog park and a stormwater pond of 1.25 acres; that access to Phase 4 and 5 would be through Cannon Road; that a Traffic Impact Study (TIS) was not required for an additional 30 units; that there is an area off Townsend Road that could be considered for emergency access to this phase of the subdivision; that there are concerns from the Community about construction traffic entering the site through Cannon Road; that the Applicant will approach DelDOT to discuss other options for a construction entrance off Townsend Road; that the original plan for Pelican Point was to consist of 7 phases with a total of 688 units and when this phase is completed it will be at a total of 473 lots; that this is consistent of the character and trend of development in the area; that they represent a good use of the cluster subdivision tool within the AR-1 district and are consistent with the existing plans and approvals for Pelican Point; and that the Applicant will submit proposed conditions of approval for the Commission's review.

Ms. Stevenson asked if the Developer plans to complete phases 6 and 7 in the future.

Mr. Hutt stated that information is unknown as the Developer does not presently own the land that would be required for the additional phases.

Mr. Hopkins stated that there are approximately 200 units from the original approval if the last two phases are developed. Mr. Hutt concurred.

Mr. Sharp asked if there are cross access easements in the community.

Mr. Hutt responded that they are not cross access easements per se as they are all part of the same community; that residents may all use the amenities within the entire community and will all be part of one HOA.

The Commission found that no one spoke in favor of and one in opposition to the Application.

The Commission found that Mr. Anthony Koether stated that he was not necessarily opposed to the Application; that he would like the plan to be amended to include the construction entrance; that having only one entrance through Cannon Road would be a safety issue for the current residents; and that many of the current residents must cross Cannon Road to get to the amenities in the central location.

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

Prior to the recess, the Commission discussed Application 2019-30 – Pelican Point 4-5. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Recess 5:10 P.M. – 5:40 P.M.

Mr. Sharp restated the how the meeting is conducted at this location and described the procedures for public hearings before the Planning and Zoning Commission.

C/U 2258 Bioenergy Development Group, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311)) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation, to be located on a certain parcel of land lying and being in Broad Creek hundred, Sussex County, containing 228.88 acres, more or less. The property is lying on the west side of Seaford Rd. (Rt. 13A) approximately 0.2 mile north of Oneals Rd. (S.C.R. 485). 911 Address: 28338 Enviro Way, Seaford. Tax Parcels: 132-6.00-88.01 & 95.00, 132-11.00-41.00 & 41.02.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the legal description of the lands, a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the previous ordinances for the site; a copy of comments from the Sussex County Engineering Department Utility Planning Division a copy of the PLUS response, a copy of the DelDOT service level evaluation response dated January 16, 2020 and a letter received from DelDOT. Mr. Whitehouse noted that Staff have received 113 letters in opposition and 10 letters in support of the Application.

The Commission found that Mr. Denis Schrader, Esq. was present on behalf of the Applicant, Bioenergy Development Group, LLC; that also present are Mr. Peter Ettinger of Bioenergy, and Mr. Jeffrey Bross of Duffield along with other team members who will address questions that the Commission may have. Mr. Schrader stated that there will be a lot of scientific matters introduced today by both the Applicant and the opposition; that a lot of these items will be regulated by DNREC, DelDOT and other State agencies; that the Application today is for the land use; that an exhibit book has been submitted including proposed findings of fact; that this property is operating under a Conditional Use that began in 1995 as a pellet plant; that since that time, there have been two amendments to the Conditional Use; and that it is an active site that has been used for the poultry industry since the original Application.

The Commission found that Mr. Peter Ettinger was present on behalf of the Application. Mr. Ettinger stated that Bioenergy is looking forward to being a part of the Sussex County Community; that they plan to build a anaerobic digester; that they have been in business for approximately 22 years, have built 220 plants throughout the world and are currently building 3 plants in the United States; that Bioenergy owns its own microbiology lab; that it is important to know how to use microbials to produce a renewable natural gas product and create a digest aid that can be used as a compost; that they believe in the reuse, recycling and repurpose of materials; that anaerobic digestion is economically smart and an environmentally savvy alternative to land application, overcrowded landfill use, and pollution-causing incineration; that it is important to manage this waste in a manner that does not involve trucking it hundreds of miles; that they take organic inputs and put them through a completely enclosed process transforms organic residuals into renewable energy and a nutrient-rich compost; that anaerobic is not new to the area as it is used on a smaller basis by five or six locations in Delaware; that this site will be

named the Bioenergy Innovation Center (BIC); that it will be located in on a 228 acre parcel of land in Seaford and they will work with the University of Delaware and Del Tech; that the digester will sit behind the old Perdue pelletizing plant and will work with the composting plant already on site; that this will be a single campus and the different sections will be integrated; that the facility is approximately 1.5 miles from any residential property; that they will be able to process 210,000 tons of excess organics from the poultry industry; that the goals are to become a member of the community, to combine the existing composting facility with the process of the anaerobic digestion to address the challenges of disposal of organic residuals, to create a new source of renewable, sustainable and clean energy for the continued economic growth of Sussex County, to market sell the digestate to farmers and gardeners to improve their soil, and to reduce greenhouse gas; that there are three key points to keep in mind, healthy soils, clean air and water; that there will be a waste water facility will be onsite; that community engagement is important and as such BIC has donated to the Spade and Trowel Garden Club, the Delaware Food Bank and other local organizations; that there was a discovery day to give the Community the opportunity either in person or virtually to see what takes place on the site; that there will be the creation of 30 jobs onsite with a number of other indirect jobs; that digestate improves the soil health of farms and communities by recycling nutrients and carbon in organic waste back into the soil; that digestate can be used as livestock bedding; that digestate can be used as a plant nutrient source instead of synthetic fertilizers; that they are taking materials that are waste and looking at them as opportunity by using technology to transform that waste into two new products of great value to the community; that this will reduce odors, pathogens, greenhouse gases at a six-day week facility that will have tremendous impact in Sussex County.

The Commission found that Ms. Christine McKiernan, Head of Engineering and Construction for Bioenergy Development Group was present on behalf of the Application. Ms. McKiernan stated that safety in design, construction and operation is important; that understanding what happens at these plants is also important so that local, state and federal regulations are adhered to; that Bioenergy Development Group has been in business for a long time and they will partner with Chesapeake Utilities Corporation which has an incredible safety record; that Chesapeake Utilities Corporation will take the biogas produced at this site and they will create the renewable natural gas and bring it approximately one mile and inject it into the pipeline; and that this is energy to fuel houses and businesses that is not petrol derived but green energy.

Mr. Schrader stated that Route 13A is quite a distance from the activity on the subject property; that the railway line runs between Route 13A and the property; that there is screening and protection from adjacent properties by the wooded area onsite; and that there is a private road leading to the facility.

The Commission found that Mr. Jeffrey Bross, Professional Engineer with Duffield Associates, was present on behalf of the Application. Mr. Bross introduced his colleagues from Duffield Associates also in attendance, Scott Hoffman, Steve Gorski, Steve Cahill, Brian Lyncha and David Small. Mr. Bross stated that the site is comprised of four parcels totaling 228 acres; that the site includes an access road, scales, the former pelletizing plant, office, mixing building for the compost operation, compost piles, an existing stormwater water and a location for the anaerobic digester; that the existing pelletizing plant would be repurposed to receive feedstock, have an odor control system, a control room and an electrical distribution for the site; that the site will include four anaerobic digesters and pre-tanks which are shown as circles on the site-plan; that also shown on the site plan is the relocated stormwater pond and a wastewater pretreatment plant; that the total of this project will be approximately 11 acres of the total 228 acres; that there will not be a change to the wooded cover and will create an additional 2.78 acres of impervious cover which is 1.2% of the entire site; that there will be two landscaped buffers to the east of the site; that the site is subject to permitting and regulations from DelDOT, Fire Marshal, Sussex Conservation District and multiple divisions of DNREC; that no Traffic Impact Study is required as the

use is consistent with the current Conditional Use permit; that the project has received a letter of no objection from DelDOT; that the project has received entrance improvements approval from DelDOT; that the State Fire Marshal has issued approval for the site plan and the additional approval for buildings and tanks is pending; that wastewater from the Anaerobic Digester (AD) process will be treated onsite; that effluent quality from on-site treatment will meet Sussex County Public Sewer Discharge Standards; that much of the effluent will be recycled back into the AD process; that at full capacity wastewater will be less than 60,000 gallons per day; that wastewater is proposed to be trucked to a facility operated by Sussex County for discharge; that options for connection to local municipal systems is being evaluated; that the facility is expected to meet potable and emergency water needs with existing on-site wells and a water storage tank; that the AD process does require water which is provided through recycling of treated wastewater generated by the AD process; that the goal for managing stormwater is to have zero discharge to surface waters; the existing stormwater pond for the compost area is being upgraded by installing aeration to enhance evaporation, raising the weir to enhance storage capacity, exploring offsets for potential discharge from the pond, and the industrial stormwater plan to be updated after construction under NPDES; that the existing stormwater pond will be relocated to accommodate the new infrastructure and has received an approved Sediment and Stormwater Management Plan from Sussex Conservation District; that this project does not result in feedstock or product being exposed to weather conditions as it is a fully enclosed system; that there are several emission sources on the site, a thermal oxidizer for treatment of waste gases from biogas processing, a flare to serve as emergency backup treatment for waste gases and a standby generator for use when electricity from the grid is not available; that all units are considered minor sources under DNREC regulations; that all permit applications are currently under review by DNREC; that recently BIC has added a scrubber that will require an emissions permit and will be processed by DNREC; that the project will also require a resource recovery permit that will apply to both the AD and composting operations, this permit has been submitted to DNREC and is under review; that in summary, all the DelDOT permitting is completed, all site permitting with the Fire Marshal is completed, the Resource Recovery and Air permits have been submitted to DNREC and are under review, Sussex Conservation District permitting is completed, the existing on-site wells are adequate for water supply and the Applicant is working with Sussex County on wastewater discharge.

Mr. Schrader stated that this site has had a Conditional Use since the 1990's and has had that permit revised four times over the history of the site; that this conditional use falls under 115-22 of the Code; that the Conditional Use before the Commission meets the requirement of the Statute because the use is public or semi-public in nature, it is desirable for the convenience and well-being of the community; that letters of support have been received from state representatives and senators who are familiar with this site; that the project relates to the Comprehensive Plan as it is an industrial site; that there will be minimal effect on the adjacent properties as there is a distance from the activities on site to the nearest residential properties; that there are a number of letters in opposition to the Application; that this is a 228-acre property with a very small area of the property to be used and that this is not a refinery as stated in some of the opposition letters; that this use is environmentally sound and will be monitored by DNREC and other agencies; that this use is good for the poultry industry; that it allows for farmers not to use their own waste from their farms as fertilizer; that it allows for that waste to be recycled and to be used for the good of the public; and that if this Application receives approval of Council, the Applicant will have to comply with all local, state and federal regulations.

Ms. Wingate asked if the process of trucking in material is the same for this Application as it was for the Pellet operation.

Mr. Ettinger stated that the materials will be trucked into the site and there will be no real change in the

number of trucks entering the site.

Ms. Wingate asked if water is necessary for operations would be available onsite.

Mr. Ettinger clarified that there is a minimal amount of water used in this process as it is not a litter plant; that litter is a very dry product and requires large quantities of water to moisten it; that the Dissolved Air Flotation (DAF) waste used in this process has a 10-12 % solid content and is very moist; and will have little impact on the water supply.

Ms. Wingate asked if there would be safety training with local agencies and fire departments.

Mr. Ettinger stated that safety training of staff has already begun; that the facility is fully alarmed and there is security staff onsite.

Ms. Stevenson asked where the litter and DAF coming from.

Mr. Ettinger stated that the DAF would primarily be from Delaware and some that would come up Route 13.

Ms. Stevenson asked what happens to all the waste if it did not come to this site.

Mr. Ettinger stated that the poultry industry may move to other states where rules are less stringent; that the alternative is leeching and influencing the Chesapeake Bay and the Nanticoke; that when the material is in the AD it is being changed and being combined with carbon sources to make it a cleaner and safer product for the environment.

Ms. Stevenson asked if there is a market for the by-product.

Mr. Ettinger responded in the affirmative.

Mr. Hopkins asked why this is a conditional use and not industrial.

Mr. Schrader stated that this site has had a conditional use for approximately 25 years; that the conditional use and the industrial use operate in similar ways; that with the Conditional Use permit, the Council can place conditions that will protect the community; that if the Applicant applied for the industrial use, the Applicant would still have to come back with a final site plan and again, Council could place conditions on the use.

Mr. Hopkins asked how the material coming to the site is measured.

Mr. Schrader stated that the material is weighed; that the trucks coming in are weighed and again when they leave the site.

Ms. Wingate asked what is happening to the DAF currently.

Mr. Ettinger stated that it is used in land application and stored in large tanks to be used for land application; that Councils are getting complaints because of the odor when it is land applied; that most of what will be used is DAF or the “pieces and parts”; that not so much litter will be used in the digester; that blood is a commodity; and that they are permitted for 220,000 tons of DAF / year.

Mr. Hopkins stated that this will be a real service to the community.

Mr. John Rebar from DNREC was available by teleconference to answer questions from the Commission and stated that he had no prepared comments.

There were no questions from the Commission members.

Mr. Bill Brockenbrough from DelDOT was available by teleconference to answer questions from the Commission and stated that he had no prepared comments but had submitted a letter to Staff.

There were no questions from the Commission members.

Chairman Wheatley asked if offal is the same as DAF and could it be used in the anaerobic process.

Mr. Ettinger stated that the composition of offal is challenging but they are considering a pilot program to see what could be done with offal.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he sees holes in this Application; that there is no PLUS review of the Application; that the last review for this site was completed in 2012 and was only completed for one of the four parcels of this Application; that the fire marshal report is incomplete as it did not mention anything about the methane gas that will be produced at this site; that methane gas is an explosive or combustible; that DNREC also needs to address the methane or compressed natural gas; and that there was no discussion from DelDOT regarding truck traffic.

The Commission found that Ms. Maria Payan spoke in opposition to the Application. Ms. Payan stated that the Application is deficient because of the confusion about DAF and litter; that the amendment lists litter, and this caused the confusion; that this use would be water intensive; that the Application should be more complete, and Chesapeake Utilities should be part of the Application; that a request was made that this hearing be postponed as the Bioenergy Development Group, LLC has different names on different Applications; that the use will increase traffic; that it is the responsibility of Sussex County to protect the health and welfare of the citizens; that more waste will be brought into Delaware from other states does not make sense for safety or to benefit Sussex County; that there are manufactured home communities within two miles of this site; that this area is already overburdened with pollution; and that there is a limited market for composting products. Ms. Payan submitted exhibits.

Mr. Wheatley stated that the responsibility of the Commission is to decide if the use is appropriate on the parcel of land indicated on the Application; that the questions regarding the names of the companies in not under consideration of the Commission; and that it is not unusual for company names to change as they evolve and change.

Mr. Wheatley asked Mr. Schrader to respond to the questions from Ms. Payan regarding pollution, the market for the composting material and the range of jobs that will be created.

Mr. Hopkins stated that from what he heard the Applicant testify to, that there will be less truck traffic with this use than with the prior use on the site.

Mr. Schrader stated that Bioenergy Development Group is the land holder and is a party to any application for this site and that the engineers for the project will address the questions.

Mr. Bross stated this this will not be a polluting activity; that DNREC require several permits and that DNREC is rigorous with regulations; that this use will not injure the health or welfare of the citizens of Delaware; and that the Applicant has already made improvements to the current composting operations and to stormwater management.

The Commission found that Mr. Steve Gorski, Duffield Associates addressed the traffic concerns; that the number of trucks is like the previous use; that the only increase in traffic will be the number of employees driving to and from the site; and that all truck traffic is counted the same way.

Mr. Ettinger stated that the jobs will range from simple vehicle operators to researchers and scientists that the salary range is \$15 - \$27 per hour starting out and there will be a number of managers under contract and not under an hourly wage; that there are benefits such as hospitals and a 401K; that they have a market for the compost produced onsite; and that they sold more compost in 1 year than Perdue sold in 4-5 years.

The Commission found that Mr. Dustin Thompson spoke by teleconference in opposition to the Application. Mr. Thompson stated that the Application does refer to poultry litter; that he has concerns about gases that will be produced on site but the major concern is the poultry litter contributing towards pollution in Sussex County; that he has concerns about the effect to the Gum Branch Wetlands behind this facility from the increased impermeable surface on this site; that he has concerns about air quality since biogas will be produced on this property; that no explanation was given about how the impurities would be removed from the biogas before it is injected into the natural gas line; and that the Application does not reflect the presentation that was given this evening.

Mr. Schrader stated that the Application this evening is to expand the previous Conditional Uses on the property; that the ordinances for the prior three Conditional Uses were for the processing and handling of poultry litter and had to be referenced in the title for this Application.

Mr. Bross stated that there is a tax ditch at the rear of the property but there are no wetlands on the property; that the stormwater pond will not impact the tax ditch; that the stormwater pond will not be lined; and that Sussex Conservation District have reviewed and approved the stormwater management plan.

The Commission found that Mr. Tyler Lobdell spoke by teleconference in opposition to the Application. Mr. Lobdell stated that he is an attorney with Food and Water Watch; that the description should be more defined than poultry litter; that poultry litter is a very broad term and the Applicant could bring in whatever waste they think is appropriate in the future; that there is a discrepancy between the paperwork filed with DNREC and the Application before the Commission; that it should be clear what will be introduced into the digester; that while feedstock may be used in the digester, it is important to know how this will operate; that it is important to know what pollution will be created by this site; that there is a difference between compost with poultry litter and a gas production facility without poultry litter; that he would like Bioenergy to explain exactly what this site will handle, exactly what will be put into the digester and how the waste will be handled; and that he recommends denial.

The Commission found that Ms. Cheryl Siskin spoke by teleconference in opposition to the Application. Mr. Siskin stated that she is the chair of Conservation for the Sierra Club; that this road is a concentration of residential uses; that because a certain land use was appropriate in 1995 does not mean that it would be appropriate today; that this application is a significant capacity increase; that while the site does sit back from the road the concern is that if you allow an industrial use so far into the wooded area, then you are creating a precedent for industrial uses all the way to the street; that air quality monitoring has

to be at least a condition if this is approved; that as the notice referenced poultry litter and seems inadequate; that there are concerns that the traffic will be increased in the area; and that she questions that this is appropriate use for this area.

The Commission found that Mr. Chris Bason spoke by teleconference in support to the Application. Mr. Bason stated that he is the executive director for Delaware Center for Inland Bays; that, although this project is located outside of the inland bays watershed, it would provide significant water quality, climate change and mitigation benefits to the inland bays and is consistent with the master plan; that this project will transport significant amounts of excess nutrients out of polluted watershed; that both inland bays and Nanticoke River are State of Delaware designated waters with exceptional recreational and ecological significance that are polluted by persistently high nutrient volume; that almost all inland bays have phosphorous levels that exceed healthy limits; that particularly in the Indian River the pollution is so high that sometimes the oxygen level is zero; that the amount of chicken litter produced on Delmarva has increased significantly in the past years; that this waste is often applied to land that is already phosphorous saturated; that this digestion facility in conjunction with two other facilities could possibly accept half of the litter produced on Delmarva; that AD could be an important part of the solution in managing poultry processing facility waste and poultry litter resource for healthy quality in Sussex County; that the facility will also produce sustainable renewable natural gas which will reduce the need to produce nonrenewable gas and thus reduce greenhouse gases; that this will serve as an important contribution to climate change and is a highly beneficial project; that this should be closely inspected and regulated due to its close proximity to sensitive waterways; that this is an appropriate use for the property and ask that while you support the Application that you request that DNREC closely monitor the facility to ensure the successful and publicly accepted project which will set an example of the beneficial use of large scale of anaerobic digestion.

At the conclusion of the Public Hearings, the Commission discussed the Applications.

In relation to Application C/U 2258 Bioenergy Development Group, LLC., motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:50 p.m.

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