

THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 9, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 9, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Agenda as circulated. Motion carried 5 - 0.

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the revised Minutes of the November 17, 2022, Planning & Zoning Commission meeting, for the revision of a typographical error and the Minutes of the January 12, 2023, and January 26, 2023, Planning and Zoning Commission meetings as circulated. Motion carried 5 – 0

PUBLIC COMMENT

The Commission found that no one was present in the room or by teleconference who wished to provide public comment.

DEMONSTRATION OF DOCUMENT MANAGEMENT SYSTEM

Mr. Jamie Whitehouse provided the Commission and members of the public, with a demonstration and tutorial on the new Document Management System and Land Use Docket. Mr. Whitehouse advised the Commission that the system was launched on the Sussex County webpage on Tuesday, February 7, 2023, following approval from County Council.

OTHER BUSINESS

S-22-39 Southern Delaware Medical Center, LLC (C/U 2316)

Final Site Plan & Landscape Plan

This is a Final Site Plan & Landscape Plan for Southern Delaware Medical Center, LLC (C/U 2316) for the construction of a 2-story 31,600 square-foot building for medical and professional uses and other site improvements. At their meeting of Tuesday, September 27th, 2022, the Sussex County Council approved a Conditional Use for multiple parcels through Conditional Use No. 2316 for the use of medical and professional office spaces. The change was adopted through Ordinance No. 2888. At their meeting of Thursday, December 15th, 2022, the Sussex County Planning and Zoning Commission approved the Preliminary Site Plan with final approval to be set by Commission. A condition was set that interconnectivity along the east property line was to be more accessible and not have any intrusion from the Landscaped Buffer. The property is located on the southeast side of Shady Road (Route 276), 0.14-mile northeast of the intersection of Shady Road and Plantations Road (Route 1D). The Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcels: 334-6.00-511.02, 511.06 & 513.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Staff are not in receipt of a Transportation Improvement District (TID) Agreement

and have concerns regarding the Cross-Access Agreement. Staff requested final approval by staff, contingent on receipt of all TID documents and clarification regarding the Cross-Access Agreement.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Final Site Plan and Landscape Plan as preliminary, with final approval by staff upon the receipt of all agency approvals, the Transportation Improvement District (TID) documents, and clarification regarding the Cross-Access Easement Agreement. Motion carried 5-0.

S-22-45 Lands of Reed Ventures, LLC

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a 2-story 15,840 square foot building with retail and office space, a 1,275 square foot proposed drive-thru restaurant, parking, and landscaping along Route 1. The parcel is 1.65 acres +/- and is located on the southwest side of Coastal Highway (Route 1), in the Combined Highway Corridor Overlay Zone (CHCOZ). The property is also with the Henlopen Transportation Improvement District (TID). The Applicant has submitted a letter requesting parking to be proposed within the front setback. The Revised Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 334-6.00-479.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be by the staff upon receipt of all agency approvals and provided emergency access at the rear fence, along Maple Drive. Motion carried 5-0.

(2019-29) Scenic Manor (FKA Estates at Mulberry Knoll)

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Final Subdivision Plan for Scenic Manor (2019-29) as approved by the Planning & Zoning Commission at their meeting of Thursday, September 21, 2022. On January 6, 2023, staff received a formal request to amend Condition J of the Plan's approval. The Applicant requests that Condition J, requiring "Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 AM through 5:00 PM, Monday through Friday, and 8:00 AM and 2:00 PM on Saturdays. No Sunday hours are permitted", be amended to permit working hours of 7:00 AM through 6:00 PM on Monday through Friday. This AR-1 cluster subdivision contains three-hundred and nineteen (319) single-family lots on 166.83 acres +/- and is located on the east and west side of Mulberry Knoll Road (S.C.R. 284), approximately 270 feet north of Stardust Drive. Tax Parcel: 334-18.00-43.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant approval of the request to amend Condition J of the Conditions of Approval to state "Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 AM through 6:00 PM, Monday through Friday". Motion carried 5-0.

Lank Farm District (Edwin, LLC) (S-22-10-304)

Consideration of Agricultural Preservation District

The State of Delaware Department of Agriculture has notified the Planning & Zoning Department of a new proposed Agricultural Preservation District submitted to the Delaware Agricultural Lands Preservation Foundation. The new proposed APD comprises 229.38 Acres to be located on the north

and south side of Obier Road, at the corner of Obier Road and Neals School Road. Tax Parcel: 531-5.00-6.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to grant favorable consideration to the Agricultural Preservation District request. Motion carried 5-0.

Lands of Erbe

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot to consist of 1.828 acres +/-, with residual land to consist of 5.770 acres +/- . The proposed lot will have frontage to Radish Road, while the residual land will be accessed through a 50-foot access easement. The property is located on the south side of Radish Road (S.C.R. 338), approximately 0.25 mile southwest of Hickory Hill Road in Millsboro. The Minor Subdivision complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 133-20.00-49.25. Zoning: AR-1 (Agricultural Residential). Staff are awaiting receipt of all agency approvals and request final approval to be by the staff upon receipt of all agency approvals.

Motion by Mr. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Givens, Trustees

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot to consist of 2.0755 acres +/-, with residual land to consist of 19.2676 acres +/- . The proposed lot will be located off a 12-foot paved drive and a 50-foot access easement. The property is located on the south side of Baker Mill Road (S.C.R. 483), approximately 0.44 mile west of Fleetwood Pond Road in Seaford. The Minor Subdivision Plan complies with the Sussex County Zoning and Zoning Codes. Tax Parcel: 231-17.00-40.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, this plan is eligible for preliminary and final approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary and final. Motion carried 5-0.

Lands of Ponderosa Acres, LLC

Minor Subdivision off a 15-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 61.47-acre +/- parcel into one (1) lot and residual lands with access off an existing 15-ft ingress/egress access easement. The Plan also proposes to both reconfigure and lengthen the existing easement to 906 feet. A cul-de-sac has also been provided in accordance with Chapter 99 Street Design Standards, which are required for dead-end streets greater than 300 feet in length. Proposed Lot #9 consists of 1.00 acre +/- and the residual land consists of 60.47 acres +/- . The property is located on the north side of Johnson Road (S.C.R. 207) and the east side of Route 113 (DuPont Boulevard). A shared-use maintenance agreement shall be established for use of the shared access drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-6.00-113.04. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 15-ft. easement as a preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

ORD. 23-02

An Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 334-5.00-153.00 and 334-5.00-153.02. The property is lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcel: 334-5.00-153.00 and 334-5.00-153.02.

The Commission discussed the Ordinance which had been deferred since January 12, 2023.

Ms. Stevenson moved that the Commission recommend denial of Ordinance 23-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 334-5.00-153.00 and 153.02, based on the record made during the public hearing and for the following reasons:

1. The property that is the subject of this Application is almost entirely designated as “Commercial Area” according to the Future Land Use Map in the Sussex County Comprehensive Plan. There is only a small area designated as “Coastal Area” within the parcel boundaries.
2. According to the Comprehensive Plan, the “Commercial Area” designation is designed to “include concentrations of retail and service uses that are mainly located along arterials and highways.”
3. When the current Future Land Use Map was approved, considerable thought was given to the location of the “Commercial Area” designation, particularly along the Route One Corridor.
4. It is important to maintain areas set aside in appropriate locations for future commercial use and development to support all of the residential growth that is occurring in Sussex County, particularly on the eastern side of the County. This proposed amendment and the subsequent development as a residential project would further reduce the land available for commercial development in eastern Sussex County.
5. The “Commercial Area” designation is appropriate for this site given its location along the Route One corridor where DelDOT is getting ready to do substantial roadway improvements. It is also immediately next to a fire station, mini storage facility and a large parcel that contains office and warehouse uses along with a large grocery store. The Vineyards property immediately to the south of this property also has a “Commercial Area” designation. All of these reasons support the continued designation of this property as being within the “Commercial Area” within the Future Land Use Map of the County Comprehensive Plan.
6. I am not satisfied that there are sufficient reasons to convert this property from its “Commercial Area” designation to a “Coastal Area” designation.
7. For all of these reasons, it is my motion that the Commission recommend denial of this amendment to the Future Land Use Map.

Ms. Stevenson’s motion to deny failed to advance for a vote due to lack of a second motion.

Mr. Hopkins advised the Commission that he had prepared a motion and requested that his motion be read into the record by Mr. Robertson.

Mr. Robertson read Mr. Hopkins' motion into the record, per Mr. Hopkins' request.

Mr. Hopkins moved that the Commission recommend approval of Ordinance 23-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 3-34-5.00-153.00 and 153.02, based on the record made during the public hearing and for the following reasons:

1. The parcel currently has two Area designations under the Future Land Use Map in the Sussex County Comprehensive Plan. Most of the parcel is designated as the Commercial Area while a small portion of the property is designated as the Coastal Area according to the Future Land Use Map. This application seeks to convert the entire property to one uniform "Coastal Area" designation.
2. The Coastal Area and Commercial Area are both "Growth Areas" according to the Comprehensive Plan, so this revision does not result in a substantial change to the Future Land Use Map.
3. The parcel has frontage on Janice Road, which is essentially a service road for Route One and within the Route One Right-of-Way. The property is also near the planned grade-separated intersection at Route One and Minos Conaway Road which includes service roads such as Janice Road. This is an appropriate location for a Map Amendment designating the entire parcel as Coastal Area.
4. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
5. There is central sewer and water available to the property.
6. This proposed amendment to the Future Land Use Map satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth area, since:
 - a. the Property is near the presence of existing public sewer and public water service;
 - b. the Property is within the County's Tier 1 area for sewer planning;
 - c. the Property is situated along the Route 1 corridor;
 - d. the Property is near the planned grade-separated intersection (overpass) for the Minos Conaway Road/Route 1 intersection;
 - e. the Future Land Use Map change will enable development that is in character with what exists or may occur in the area;
 - f. the Property does not contain any wetlands;
 - g. the Future Land Use Map change will not adversely impact any major preserved lands, water bodies, or lands with agricultural and other protected easements.
7. The property is predominantly surrounded by other residential properties. This Map Amendment will permit residential development, which is more consistent with these surrounding uses than commercial development under the Commercial Area designation.
8. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Hopkins, seconded by Mr. Mears to recommend approval of ORD. 23-02 in relation to Tax Map Parcel No. 334-5.00-153.00 and 334-5.00-153.02, for the reasons stated in the motion. Motion carried 4-1.

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

Ms. Stevenson voted nay for the reasons stated in her motion to deny.

C/Z 1995 Janice CRP3, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and C-1 General Commercial District to an MR-RPC Medium-Density Residential – Residential Planned Community District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 61.39 acres, more or less. The property is lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcel: 334-5.00-153.02.

The Commission discussed the Application which had been deferred since January 12, 2023.

Mr. Hopkins advised the Commission he had prepared a motion, which he requested Mr. Robertson read into the record.

Mr. Robertson read Mr. Hopkins’ prepared motion, per Mr. Hopkins’ request.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1995 Janice CRP3, LLC for a change in zoning from AR-1 and C-1 to an MR-RPC, based upon the record and for the following reasons:

1. The property is currently zoned AR-1 Agricultural Residential and C-1 General Commercial. The property is adjacent to other land zoned C-1 General Commercial that is being developed as a high-density mixed-use development, a manufactured home park, and other MR-zoned land nearby. This is an appropriate location for MR zoning.
2. The Applicant seeks approval of townhomes and multi-family structures. The Comprehensive Plan states that this type of development is appropriate in areas near main roadways, near commercial areas and employment centers, and with central water and sewer. All of the considerations are satisfied here.
3. The proposed development will have no more than 316 homes on 66.73 acres. The net density is 5.12 units per acre which is similar to other nearby developments including Whispering Pines, The Vineyards, Sandbar Village, and Lewes Crest.
4. The County Engineering Department has indicated that adequate wastewater capacity is available for this site. Central water will also be provided.
5. DelDOT has determined that the project will have a minor impact on area roadways. In addition, this site is within the Henlopen T.I.D. and therefore the developer will be required to enter into an infrastructure agreement and pay the T.I.D. unit fee prior to the issuance of any building permits.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. Approximately 45% of the site will also be open space.
7. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics, and this is the last parcel to be developed residentially among other existing residential properties.

8. The Commission has recommended that the Future Land Use Map for this property be changed from a split Coastal/Commercial area designation to being entirely Coastal Area. Development such as this MR-RPC is appropriate in the Coastal Area according to the Plan.
9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
10. This recommendation is subject to the following conditions:
 - A. There shall be no more than 316 dwelling units within this project.
 - B. Chapter 115, Article 16, allows the modification of bulk area standards. Here, it is appropriate to allow flexibility in these bulk requirements to permit a better design of the townhouse and multi-family buildings, as follows:
 - i. Front Yard = minimum of 20 feet
 - ii. Front Corner Yard = minimum of 15 feet
 - iii. Rear Yard = minimum of 10 feet
 - iv. Combined Front & Rear Yard = minimum of 40 feet
 - v. Side Yard = minimum of 10 feet
 - vi. Minimum Lot Width = 20 feet
 - vii. Minimum Lot Length = 100 feet
 - viii. Minimum Lot Area = 2,000 square feet
 - ix. Average Lot Area = must be 3,000 square feet, provided that no lot is less than 2,000 square feet in size
 - C. A condominium association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas.
 - D. All entrances, intersections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements, and that developer shall comply with the requirements of the Henlopen T.I.D.
 - E. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - F. The RPC shall be served by central water for drinking water and fire protection.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - H. The development shall be served by its own on-site amenities including a clubhouse, pool, dog park, playground, and pickleball courts. The pool house shall have a minimum square footage of 3,500 feet, and the pool shall have a water surface area of at least 2,000 square feet. The pool and pool house shall be completed and open for use prior to the issuance of the 175th building permit. The rest of the active amenities shall be completed prior to the issuance of the 250th building permit.
 - I. A 20-foot wide vegetated or forested buffer shall be established along the perimeter of the site, with the exception of the boundary with the fire station and the roadway next to the adjacent self-storage facility. This buffer shall utilize existing forest or similar vegetation if it is currently present in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the

area within the buffer shall be prohibited. All silt fencing shall be located along the interior edge of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.

- J. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district’s transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
- K. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office (GIO).
- L. 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.
- M. The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. The landscape plan shall also identify all “Limits of Disturbance” within the site.
- N. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.
- O. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m. A 24-inch by 36-inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- P. The Final Site Plan shall be subject to the review & approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears to recommend approval of C/Z 1995 Janice CRP3, LLC for the reasons and conditions stated in the motion. Motion carried 4-1.

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

Ms. Stevenson voted nay as she believed commercial uses should be mixed in with the plan and she felt the parking situation was not tenable.

ORD. 22-07

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCELS 135-15.00-98.00 & 98.01. The properties are located on the south side of Lewes Georgetown Highway (Route 9), approximately 0.4-miles east of the intersection of Sand Hill Road (S.C.R. 319) and Lewes Georgetown Highway. 911 Address: 22242 Lewes Georgetown Highway, Georgetown. Tax Parcels: 135-15.00-98.00 & 98.01.

The Commission discussed the Ordinance which had been deferred since January 26, 2023.

Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0. Mr. Hopkins abstained.

C/U 2369 Leeward Chase DE, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (106 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 50.80 ACRES, MORE OR LESS. The properties are located on the south side of Lewes Georgetown Highway (Route 9), approximately 0.4-miles east of the intersection of Sand Hill Road (S.C.R. 319) and Lewes Georgetown Highway. 911 Address: 22242 Lewes Georgetown Highway, Georgetown. Tax Parcels: 135-15.00-98.00 & 98.01.

The Commission discussed the Application which had been deferred since January 26, 2023.

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

C/U 2370 William D. & Carol Emmert

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AMENDMENTS TO CONDITIONAL USE NO. 1334 (ORDINANCE NO. 1383) TO ALLOW FOR AN ADDITIONAL COMMERCIAL BUILDING FOR STORAGE AND OPERATIONS OF A CONSTRUCTION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS. The property is lying on the north side of Four of Us Road, approximately 234 feet west of Hollyville Road (S.C.R. 48). 911 Address: 28816 Four of Us Road, Harbeson. Tax Parcel: 234-10.00-12.09.

The Commission discussed the Application which had been deferred since January 26, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2370 William D. and Carol Emmert to amend the Conditions of Approval to C/U 1334, codified as Ordinance No. 1383 based upon the record made during the public hearing and for the following reasons:

1. Ordinance No. 1383 approved C/U 1334 as “a storage building for an auction company (no retail) and a storage building for a landscaping business (no retail)”. This approval was granted by Sussex County Council on June 27, 2000.
2. The existing Conditions of Approval limited the use of the building that was included on the Site Plan at the time.
3. The Applicant has operated its business, along with a landscaping company, for many years without issue. The Applicant now seeks to expand the use to allow another building on the site along with outside storage. The Applicant testified that there is a need for this additional space to support these types of uses in this part of Sussex County.
4. This site is located on a private road known as “Four of Us Road” where other similar business and commercial uses and buildings exist. The additional uses, buildings, and storage will be consistent with this small business neighborhood.
5. The additional storage building will be located more than 400 feet from Hollyville Road and the nearest dwelling.
6. This proposed amendment will not adversely affect the neighborhood or area roadways.
7. No parties appeared in opposition to this application.

8. This recommendation is subject to the following amended conditions to C/U 1334, codified as Ordinance No. 1383:
- a. Two buildings shall be permitted on this site, including the one approved in 2000 and the additional one that is the subject of this application.
 - b. The use of the buildings shall be limited to storage and offices for an auction company, landscaping company, or construction company.
 - c. Outside storage shall be permitted in conjunction with the permitted uses for an auction company, landscaping company, or construction company.
 - d. No retail sales shall be permitted on the site.
 - e. Any security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
 - f. All dumpsters shall be screened from the view of neighboring residential properties. The locations of the dumpsters shall be shown on the Final Site Plan.
 - g. The areas set aside for parking and outside storage shall be shown on the Final Site Plan and clearly marked on the site itself.
 - h. The use shall be screened from view of the nearest residential dwelling and Hollyville Road. The location and type of screening shall be shown on the Final Site Plan.
 - i. One lighted sign shall be permitted along Four of Us Road. It shall not exceed 32 square feet in size on each side.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2370 William D. & Carol Emmert for the reasons and conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley - yea

C/Z 1974 Gregory T. White and Patricia P. White

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.83 ACRES, MORE OR LESS.

The property is lying on the northeast side of Vines Creek Road (Rt. 26), approximately 425 feet northwest of Powell Farm Road (S.C.R. 365). 911 Address: 34371 Vines Creek Road, Dagsboro. Tax Parcel: 134-11.00-152.00.

The Commission discussed the Application which had been deferred since January 26, 2023.

Mr. Mears moved that the Commission recommend approval of C/Z 1974 Gregory T. White & Patricia P. White for a Change in Zone from AR-1 to C-3 “Heavy Commercial” 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. Although a number of uses are permitted, this Applicant intends to construct a storage facility on this site.

2. This property has frontage along Route 26. Route 26 is considered to be a Major Collector roadway according to DelDOT's roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.
3. The parcel is in an area of Route 26 where there are commercial districts and business and commercial uses that have developed. This location along this part of Route 26 is appropriate for this type of zoning.
4. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
6. No parties appeared in opposition to this rezoning application.
7. 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 of C/Z 1974 Gregory T. White and Patricia P. White for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley - yea

C/Z 1975 Gregory T. White and Patricia P. White

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.64 ACRES, MORE OR LESS. The properties are lying on the southwest side of Vines Creek Road (Rt. 26) approximately 450 feet northwest of Powell Farm Road (S.C.R. 365). 911 Address: 34360 & 34376 Vines Creek Road, Dagsboro. Tax ID: 134-11.00-107.00 and 108.00.

The Commission discussed the Application which had been deferred since January 26, 2023.

Mr. Mears moved that the Commission recommend approval of C/Z 1975 Gregory T. White & Patricia P. White 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. There are other commercially-zoned properties in the area and a number of business and commercial uses are nearby. 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 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 of C/Z 1975 Gregory T. White and Patricia P. White for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley - yea

Recess

3:54 pm – 4:00 pm

PUBLIC HEARINGS

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

ORD. 23-03

AN ORDINANCE TO AMEND CHAPTER 99, § 99-39B.(2)(c) OF THE CODE OF SUSSEX COUNTY RELATING TO THE TIME PERIOD FOR COUNCIL TO RENDER A DECISION ON APPEAL.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Ordinance that was introduced to the County Council. Mr. Whitehouse advised the Commission zero comments had been received.

Mr. Robertson advised the Commission the Ordinance is related to when an appeal is received on a Commission decision, and County Council has a related public hearing; that the Code states the Appellant is required to obtain a transcript; that upon doing this the time period begins to the time period Council must act on the appeal; that the issue is the 60 day time period becomes too compressed; that a judge sits with Council; that there is a lot of difficulties attempting to schedule dates that suit all parties involved; that there may also be pre-trial and written submission which are required; that Council desires to obtain all the information; that the Council may then defer for further consideration and due to this, Council has requested the time period be increased to 120 days.

Chairman Wheatley questioned if the Ordinance would change the 60-day appeal period for the Applicant to submit an appeal and he questioned who receives the transcript.

Mr. Robertson stated the Ordinance would not impact the time period for filing and/or perfecting the appeal; that the Ordinance is related to the back end to how soon County Council must act after the appeal has been submitted; that County Council receives the transcript by a court reporter, provided by

the Appellant, of the Planning & Zoning Commission proceedings the Appellant wants to appeal; that the Appellant submits the transcripts to the County Council Clerk and the clock begins once the Council Clerk receives the transcript.

Chairman Wheatley stated there was a typographical error in Line 8 of the proposed Ordinance which states, “within width” and he believes the Ordinance should state “within which.”

Mr. Robertson stated there was a typographical error in Line 8 and that he suggested, should the Ordinance be acted favorably upon, a recommendation be made to correct the Ordinance to state “within which.”

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

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

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

In relation to ORD. 23-03. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of Ordinance 23-03 to amend Chapter 99, § 99-39B.(2)(c) relating to the time period for Council to render a decision on appeal, contingent upon the typographical error in Line 8 being corrected to state “a time limit within *which* the Sussex County Council must render its decision”. Motion carried 5-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley – yea

C/U 2374 Jose Netto and Karyne Da Silva

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ESTHETICIAN BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.28 ACRE, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Rt. 24), approximately 0.38 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: 20036 John J. Williams Highway, Lewes. Tax Parcel: 334-12.00-23.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant’s survey, the Applicant’s Exhibits, a copy of the Staff Analysis, the DelDOT Service Level Evaluation Response, and a letter from Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that zero comments were received in relation to the Application.

The Commission found that Ms. Mackenzie Peet, Esq., with Baird Mandalas Brockstedt Federico & Cardea, spoke on behalf of the Application; that Ms. Da Silva’s name was incorrectly spelled on the application and within the provided notices; that the Applicant submitted a Conditional Use application on June 3rd, 2022, to pursue a Conditional Use of land in AR-1 (Agricultural Residential) district to operate an esthetician business within the existing residential structure located on the property; that an esthetician is a trained professional that specializes in skin beautification and performs skin treatments such as facials, chemical peels, body treatments, and waxing; that there is a significant demand for the proposed use; that the subject property is located along Rt. 24; that adjacent properties are zoned AR-1 (Agricultural Residential); that an MR (Medium-Density Residential)

zoned property is located nearby; that nearby uses include residential developments, such as Saddle Ridge, Beacon Middle School, Love Creek Elementary School and Olive + Jules Hair Company; that an adjacent property to the site was the subject of a previous Conditional Use for Bee Wise, LLC, for a real estate business; that the property is located mostly within the Commercial Area classification, with a very small portion, located in the rear, being located within the Coastal Area; that the property is located within the Transportation Improvement District (TID); that the Applicant submitted Exhibits A through E; that Exhibit A details the property and deed information, with a legal description; that the information confirms Mr. Netto as the owner of the property; that DelDOT's response to the Service Level Evaluation Request was submitted; that DelDOT's response stated that the traffic impact would be diminutive; that the Service Level also notes that the property is located within the TID; that the proposed development is specifically considered to be consistent with land use; that the transportation plan, which requires applicants to pay a fee for any new building square footage; that currently there is no intent to expand the existing structure; that the proposed use will operate entirely within the existing structure on the site; that there is an existing survey of the property, which specifically demonstrates that the property is 1,2540 sq. ft. +/-, that there is an existing dwelling and an existing entrance located off Rt. 24; that Exhibit C includes relevant sections of the Sussex County Zoning Code; that Exhibit D contains aerial maps of the site; that Exhibit E include images of the property before it was resided and painted; that there are existing gravel areas located at the front and back of the property; that there is plenty of room provided for parking; that the Applicant intends to have two rooms within the existing structure to service clients; that the Applicant anticipates to have a client every hour; that the intention is to have approximately eight clients daily; that the property is mostly located within the Commercial Area according to the Future Land Use Map; that Commercial Areas are classified as areas which include retail and services uses, which are mainly located along arterial roadways and highways; that the proposed use is less intensive than other medium to larger scale commercial uses expected within the Commercial Area classification; that office uses are also considered to be appropriate within the Coastal Area; that due to this, the proposed use is consistent with the property's Future Land Use classifications; that the proposed use is a business and commercial use that is permitted as a Conditional Use when the proposes of the Chapter are more fully met by the issuance of a Conditional Use; that §115-171 details the purpose of the Conditional Use section of the Code is to provide for certain uses which cannot be well adjusted to their environment, in particular locations with full protection offered to surrounding properties by ridged application of the District regulations; that the uses are usually of public or semi-public character, being essential and desirable for the general convenience and welfare; that due to the nature of the use, the importance of the relationship to the Comprehensive Plan, and impact to neighboring properties and the County, the Application requires the exercise of planning judgement on location and site plan; that the proposed use is of semi-public character as it will provide needed services to present and future residents of Sussex County; that the proposed use is compatible with the surrounding existing uses; that the proposed use will operate entirely out of the existing structure onsite; that there is ample space provided on the site for parking; that the proposed use is not anticipated to adversely impact any neighboring properties; that proposed Conditions of Approval were submitted into the record; that the proposed condition state that the subject property will be used of the operation of the esthetician business; that the use will occur within the existing structure which will be renovated by the Applicant; that the hours of operation will be 8:00 am until 5:00 pm, Monday through Friday, and 8:00 am until 12:00 pm on Saturdays, with no Sunday hours; that the Applicant intends to place a sign in conformity with the Code; that all designated parking will be in compliance with the Code and the conditions will be memorialized in a future Site Plan.

Ms. Stevenson questioned if either Applicant lived on the property and the number of employees.

Mr. Mears questioned why the Applicant requested to close at noon on Saturdays.

Ms. Peet stated neither Applicant lives on the subject property, which is the reasoning for the Conditional Use rather than a Home Occupation; that Ms. Da Silva is the esthetician; that no employees are anticipated; that the Applicant has other employment, and the proposed use would be a job the Applicant would perform on the side of her other job.

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

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

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

Ms. Stevenson moved that the Commission recommend approval of C/U 2374 Jose Netto and Karyne Da Silva for an esthetician business based on the record made during the public hearing and for the following reasons:

1. The Application seeks approval for a small esthetician business within an existing structure located along Route 24. This area of Route 24 is an appropriate location for this small business use.
2. The property is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area supports offices uses such as this.
3. This use is compatible with area uses which include a small real estate office next door, two schools, and other residential developments.
4. The use will not adversely affect nearby properties or roadways.
5. No parties appeared in opposition to this Application.
6. This recommendation is subject to the following conditions:
 - A. The use shall be limited to office space for an esthetician business.
 - B. The use shall occur within the existing onsite structure.
 - C. The hours of operation shall be between 8:00 am and 5:00 pm, Monday through Friday, and 8:00 am to 5:00 pm on Saturdays.
 - D. The use shall comply with all Sussex County parking requirements. The Final Site Plan shall designate all parking areas associated with this use. The parking may remain pervious.
 - E. The Applicant intends to place a sign on the property as permitted by the Zoning Ordinance for Sussex County, Delaware.
 - F. All entrances, intersections, and roadway improvements, if any, shall be completed by the developer in accordance with all DelDOT requirements, including the Transportation Improvement District (TID).
 - G. A Revised Preliminary Site Plan, either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

In relation to C/U 2374 Jose Netto and Karyne Da Silva. Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley – yea

C/U 2376 Jose Hernandez

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SWIMMING POOL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 6.56 ACRES, MORE OR LESS. The property is lying on the north side of Hollyville Road (S.C.R. 48), approximately 0.28 mile southwest of Harbeson Road (Rt. 5). 911 Address: 23086 Hollyville Road, Harbeson. Tax Parcel: 234.10.00-70.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's survey, the Applicant's Exhibit Booklet, the DelDOT Service Level Evaluation Response, a copy of the Applicant's analysis, a copy of the Applicant's proposed Findings of Fact and proposed Conditions of Approval, and a letter from Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that six letters were received in support of the Application, however, a few letters appeared to be duplicated.

The Commission found that Ms. Shannon Carmean-Burton, Esq., with Sergovic Carmean Weidman McCartney & Owens, P.A. spoke on behalf of the Application; that also present was Mr. Jose Hernandez, with Pool Stars, LLC; that the Applicant had applied for a Conditional Use of land within the AR-1 (Agricultural Residential), to operate an existing pool contracting business; that the pool contracting business is known as Pool Stars, LLC; that exhibit booklets were submitted for the Commission's consideration; that the submitted exhibits included a summary of the Application's compliance with the Comprehensive Plan and the Applicant's proposed Findings of Fact and Conditions of Approval; that the property is currently owned by Mr. Hernandez's brother, Mr. Gustavo Hernandez; that the property is located along Hollyville Rd.; that the property contains approximately 6.56 acres of land; that the property is a large, deep parcel; that the property is currently improved with a single-family residential dwelling, which is currently used and occupied by the Applicant as his primary residence; that additionally the property is improved with accessory structures, which are also currently being used by the Applicant in connection with Pool Stars, LLC; that the proposed Conditional Use is a permitted Conditional Use under the Zoning Code; that the proposed use is compatible with the goals and directions of the Sussex County Comprehensive Plan; that the property is located within the AR-1 (Agricultural Residential) district; that the purpose of the AR-1 district is to provide a full range of agricultural activities and to protect agricultural lands; that Conditional Uses permitted within the AR-1 district include, among other uses, agricultural related industries, as well as residential, business, commercial or industrial uses, when the purpose of the Chapter are more fully met by issuance of a Conditional Use permit; that the property is located within a Low Density area per the 2018 Sussex County Comprehensive Plan; that the Comprehensive Plan provides that the primary uses envisioned within the Low Density areas include agricultural activities and homes; that the Comprehensive Plan further provides that business development should be confined to businesses addressing agricultural and residential needs; that focus of retail and offices uses in Low Density areas should be providing convenience, goods and services to nearby residents; that the property is located within an area where business and commercial uses already exist; that uses in the surrounding area include boat sales and storage, house moving and masonry yard and warehousing, that properties located to the east of the site are zoned for Commercial; that the property directly north of the site is zoned B-1 (Neighborhood Business); that there is an existing Conditional Use located northwest of the site; that despite Pool Stars, LLC being formed in 2021, Mr. Hernandez is not new to the pool industry; that Mr. Hernandez has provided his clients with outdoor experiences with personalized pool services for more than 15 years; that in addition to pool construction, renovation and equipment repair, Pool Stars, LLC also provide outdoor living spaces; that Pool Stars, LLC currently employ ten employees, with six business trucks; that the business trucks will be parked at the rear of the property; that the property is not open to the public; that there is no sales

facility at the site; that the proposed hours of operation are Monday through Saturday, from 7:00 am to 5:00 pm; that there is an existing sign on the property, which advertises Pool Stars, LLC; that the Applicant seeks permission to maintain the existing sign; that the Applicant does not seek any additional signs; that the proposed use will not have an adverse impact on neighboring properties or the surrounding area and uses, as the proposed use is an extension of an existing commercial and business area; that the Applicant has received support from three neighboring property owners; that the Applicant is not proposing any new structures be placed on the property; that storage of pool equipment and material will be maintained within the existing structures or outside on the site; that materials such as pavers, stone, sand, and pipes will be stored outside to the side and rear of the property; that the proposed use will have no adverse impact on traffic within the area; that DelDOT did not recommend a Traffic Impact Study (TIS) be performed for the proposed use; that the proposed use is of a public or semi-public character; that the use is desirable for the general convenience and welfare of neighboring properties and use within the area; that the proposed use will facilitate the Applicant's ability to reside on the property while continuing his established local business at the property, while serving the needs of the expanding population within Sussex County and the Applicant requested the Commission recommend approval of the Conditional Use request based upon the record and the presentation.

Ms. Wingate questioned if chemicals are properly stored and disposed of from the property.

Mr. Mears questioned if any heavy or small equipment would be stored on the site and if fiberglass and cement pools were offered.

Mr. Hopkins stated he felt the use was appropriate given the other commercial uses surrounding the site.

Mr. Hernandez stated that he does store chlorine; that the chlorine is stored in containers, that the chemical containers are sent back to the pool suppliers when empty or no longer needed; that he does have small excavators, two loaders, mason mixers, and utility trailers for hauling, three small dump trucks and three enclosed trailers located on the site and that he offers both fiberglass and cement pool services.

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

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

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

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

Mr. Robertson recused himself from the next application. Mr. Robertson left Council Chambers.

C/U 2340 Inland Bays Preservation Company, LLC:

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WASTEWATER RECLAMATION TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26.05 ACRES, MORE OR LESS. The property is lying on the northeast side of Banks Road (S.C.R. 298),

approximately 400 feet northwest of Green Road (S.C.R. 298A). 911 Address: N/A Tax Parcel: 234-17.00-170.00 (P/O).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Conceptual Site Plan, the Staff Analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DeIDOT Service Level Evaluation Response (SLER), and Technical Advisory Committee (TAC) Letters, which included letters from the U.S. Fish & Wildlife, Division of Waste & Hazardous Substances, Sussex County Engineering, Delaware Electric Coop and the Inland Bay Preservation Company. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application for Inland Bays Preservation Company, LLC; that also present were Mr. Jason Palkewicz with Solutions IPeM, LLC, Mr. Arijit Sarkar, Senior Wastewater Project Manager with Tunnell Companies, LLC, Mr. Edward Nichols with Nichols Environmental, LLC, and Mr. Ashwini Khare, Group Manager, SiCBLOX Wastewater Sustainably Group with OVIVO; that an Exhibit Booklet was submitted for the record; that the Exhibit Booklet does contain architectural renderings of the proposed facility; that the Conditional Use request is for a new wastewater reclamation facility for the Inland Bays Preservation Company; that the Inland Bays Preservation Company was founded by the Tunnell Companies, L.P. in 1988 to provide central sewer service to the Pot Nets developments, located along Long Neck Rd.; that the Inland Bays Preservation Company is a utility company that is regulated by the Delaware Public Service Commission; that the company does hold a Certificate of Public Convenience and Necessity (CPCN) to provide central sewer service in their franchise area along Long Neck Rd.; that the company constructed the existing wastewater facility in approximately 2000, as part of the development of Baywood Greens Residential Community and Golf Course; that the operation consisted of the collection treatment and disposal of domestic wastewater from the Baywood Greens development; that the existing Baywoods facility is located on the golf course of the Baywood Greens development, along the development street name Back Nine Way; that the existing treatment facility is designed to provide tertiary treatment for up to 95,500 gallons per day of domestic wastewater; that the existing treatment facility is designated as a Class 3; that the current facility operation consist of one 4.3 million gallon line treatment lagoon, one 8.3 million gallon lined treatment storage lagoon, a disinfection chamber, a building housed screen filtration unit and a SCADA control unit; that a SCADA control unit is a sophisticated control system, which is comprised of computers with networked data communication and sensors, providing constant supervision of the equipment and operation; that the treated effluent is dispersed by spray irrigation on 54 acres of the golf course, consisting of holes 10 through 18, and the driving range; that the operation produces an effluent that meets or exceeds DNREC's standards; that the Inland Bays Preservation Company's treatment and spray irrigation operations are authorized by issued permits by DNREC; that the current Application only involves the relocation and construction of a new wastewater treatment facility on a parcel of land, located on northside of Banks Rd.; that the subject property is owned by the Tunnell Companies, L.P.; that the property is part of the Keystone Bay subdivision; that once operational, the new facility will replace the existing facility; that the new facility will be designed to treat an average daily flow of up to 390,000 gallons of domestic wastewater; that the operation would be designed under a Class 4 facility classification; that the proposed facility would be constructed in two phases; that the first phase is to include the construction of the building and the processing equipment to treat approximately 193 gallons of wastewater; that the second phase would expand the equipment to allow for treatment of 390,000 gallons of wastewater; that the Conditional Use request only pertains to the wastewater treatment facility; that the two existing lagoons, located on the golf course, will be repurposed as covered storage basins for treated and disinfected effluent from the new facility; that ultimately, the treated effluent will be sprayed onto the golf course, under the

same process currently being performed; that the new facility is designed to address any potential odor and noise concerns; that the operation will be enclosed in the building, which incorporates ventilation, climate control and biological odor control systems; that the solids dewatering operation will be performed in an enclosed building with similar ventilation and control systems; that the systems will minimize or eliminate any potential nuisance from the facility; that the aeration system and blowers systems are designed with sound control enclosures that limit noise levels; that the blower enclosures will be relocated into a separate blower room which will eliminate the blower noise to be heard from outside the building; that all other mechanical equipment, such as pumps and motors, will be installed inside the equipment and operations building; that the facility will be staffed by three to four licensed operators; that the staff will typically be present at the facility from 6:00 am until 4:00 pm; that staff will be present at the facility during off-hours on an as needed basis; that the site consists of 1.7 acres; that the property is part of the Keystone Bay subdivision; that the entrance to the site would be from Banks Rd.; that four parking spaces and a loading zone will be provided; that DelDOT indicated the traffic impact for the proposed use would be negligible; that a 30-ft. forested landscape buffer is proposed along the east and west sides of the property; that the Applicant intends to preserve and incorporate the existing trees along the buffers; that the buffers will be supplemented with additional plants in areas where the buffer requirement is not fully met; that a six foot privacy fence is proposed within the side buffers; that fencing located within the front yard setback will be shorter in height to keep in compliance with the Code; that due to the fence being located within a wooded buffer area, the fencing will not be placed straight, as it will require a creative meandering placement; that a 20-ft. landscape buffer is proposed at the rear of the property, being adjacent to the Keystone Bay development; that stormwater management from the site will be managed as part of the Keystone Bay development system, which is located adjacent to the site; that central water will be provided by the Longneck Water Company; that there are no wetlands located on the site; that the site is located within Flood Zone X, being outside of the Flood Hazard area, according to the FEMA Flood Insurance Maps; that the appearance of the building will be residential in character; that there are several significant reasons for the necessity of the proposed facility; that modern central wastewater facilities are essential for the health and welfare of the current and future residents of Sussex County, as well as offer protection to the environment, specifically being the Inland Bays; that the existing wastewater facility has been in operation for over 20 years; that over the last 20 years the facility's technology has aged, causing a lack of treatment capacity future growth of the area; that the proposed facility will utilize state-of-the-art equipment, that will allow for a much higher quality of treatment than the current operation; that the new facility will provide increase capacity and will be designed to conserve energy consumption; that the main reason for the new facility is to provide the ability to serve the future growth of the area; that the existing facility must remain fully operational until the new facility is fully completed and placed into operation; that there is no sufficient space for the new facility on the existing facility site; that the subject site is part of the Keystone Bay development; that Keystone Bay is a 651 lot cluster subdivision, being located on 319 acres, on both sides of Green Rd.; that Keystone Bay also has frontage along Banks Rd.; that the Keystone Bay subdivision was approved by the Planning & Zoning Commission in January 2020; that the same property had previously been approved for a 597 lot subdivision, by the name of Bridlewood, in 2005; that Bridlewood did not proceed and was voided over time; that under the previous Bridlewood application, the subject site was proposed for the placement of a maintenance building; that the proposed site is located between the Keystone Bay development and Baywood Greens development; that the location of the site will enable the efficient collection and treatment of wastewater from both developments, while allowing storage and spray disposal operations to remain on the golf course; that Sussex County also provides sewer service for the area; that Sussex County has an existing sewer main running along Banks Rd.; that the proposed site provides efficient means for interconnection between the County and Inland Bays Treatment systems, which can be utilized in the event of a major equipment failure of either system or other emergencies; that within the Sussex County Engineering memorandum, dated January

13, 2023, the Engineering department requested the ability of interconnection be placed along Banks Rd, between the facilities; that the site is zoned AR-1 (Agricultural Residential); that the property is part of the Keystone Bay subdivision; that Conditional Uses for the use of public utilities, including treatment plants, are permitted for AR-1 as a Conditional Use; that the purpose of a Conditional Use is to provide for certain uses of a public or semi-public character, that are essential and desirable for the general convenience and welfare of Sussex County; that the proposed Conditional Use was review as part of the State's PLUS process; that the PLUS Review letter, dated January 13, 2022, stated that the Office of State Planning Coordination had no objection to the proposed Conditional Use for a water reclamation facility; that the Zoning Code recognized the important relationship between a Conditional Use and the Sussex County Comprehensive Plan; that Chapter 7 of the Comprehensive Plan addresses utilities; that the Comprehensive Plan states the envision for utilities is to ensure safe, reliable, economical utility services are available to Sussex County residents and businesses; that on Page 7-13 of the Comprehensive Plan, the Inland Bays Preservation Company is listed as one of the private sewer service providers in Sussex County; that the Comprehensive Plan states that private utility companies are a viable option for wastewater treatment; that Page 7-15 within the Plan contains a map reflecting Inland Bays Preservation Company's service area along Long Neck Rd.; that on Page 7-21 of the Plan it states a goal of the plan is to encourage adequate central sanitary sewer service in a coordinated approach; that the Plan anticipates future demand, with the objectives of continual maintenance and upgrading to the existing sewer infrastructure to ensure sound operations; that the Applicant feels the proposed Conditional Use is in compliance with the goals of the Comprehensive Plan; that the proposed use is essential and desirable for the general convenience and welfare of residents; that the proposed use is necessary for public health, safety and protection of the environment; that proposed Conditions of Approval and proposed Findings of Fact were submitted for consideration and for the reasons stated the Applicant requested a recommendation of approval from the Commission for the proposed Conditional Use.

Ms. Stevenson questioned the noise protection measures being performed for the aeration blowers and if the proposed system will be fully connected to Sussex County's Sewer system.

Ms. Wingate questioned if the SCADA control system will be associated with Sussex County's SCADA system, how long the existing wastewater plant has been operating, and if the existing wastewater facility had experienced any spills or environmental issues in the past.

Mr. Mears questioned what smells would be associated with the proposed use of the property and requested confirmation that the treated wastewater would be placed on the golf course.

Chairman Wheatley stated the subject parcel is a 26-acre parcel; that he questioned if the Applicant is requesting a Conditional Use for all 26 acres or the portion of the parcel.

Mr. Whitehouse stated the short title referenced a request for a portion of the site and the Commission can limit the use to a specific area on the site.

Mr. Fuqua stated that the aeration system and blowers would be designed in sound control containment box that limits noise levels; that the containment box will be in a blower room, which will eliminate the blower noise to be heard from outside the building; that it is anticipated the proposed system will have a connection to Sussex County's Sewer system; that the two sewer systems will not be operating together unless there is an emergency; that the existing wastewater plant being in operation approximately 23 years as it began in 2000; that the Applicant had stated he was not aware of any environmental hazards or issues on the existing facility site; that with the proposed technology for the use, any odors associated with the use would be controlled and minimized; that the treated

wastewater will be sprayed on the golf course and the Applicant requested the Conditional Use be permitted for the 1.739 acres of the 26 acres, as reflected on the submitted Site Plan.

Mr. Palkewicz stated the proposed SCADA control system will be independent and will not be associated with Sussex County's SCADA system.

The Commission found three people present in opposition to the Application.

The Commission found that Mr. Ray Griffith spoke in opposition to the Application; that he lives adjacent to the site; that the subject area is one of the lowest areas on Banks Rd.; that twice a year the area floods; that raising the property and covering the area in concrete will cause more flooding to his property and he questioned why the facility had to be placed toward the front of the property and not the rear of the property.

Mr. Fuqua stated the property is required to provide stormwater management facilities; that stormwater management will be provided by the existing stormwater management facilities of the Keystone Bay subdivision; that the Keystone Bay facilities are comprised of an extensively designed stormwater management system and due to this, facilities are not required on-site, as the water will be directed into the existing Keystone Bay stormwater management system.

Mr. Robert Tunnell stated there are multiple DelDOT improvements anticipated at the front of the property, along Banks Rd.; that the anticipated improvements are to include catch basins and stormwater management; that all stormwater runoff from the site, down to Winding Creek will be directed onto the Keystone Bay property or the Baywood Greens property, being controlled; that stormwater runoff was a concern he previously discussed with an adjacent neighbor, Ms. Dorothy West before the meeting started; that he had scheduled a meeting with her for Friday, February 10th, 2023, to discuss the proposed plans, as well as all future DelDOT improvements and he would be happy to schedule an appointment with Mr. Griffith to discuss the plans.

The Commission found that Ms. Dorothy West spoke in opposition to the Application; that she questioned what the abbreviation, SWM Pond, stood for; that she questioned if the stormwater management ponds would be covered, or mosquito-infested; that she questioned what the loading space was for and what material would be loaded, that she questioned what the abbreviation for CMF Disturbed stood for; that she questioned if there would be any interference with the aquifer and how many ponds will be located on the site; that she questioned what pavement hatching is, if staff would be present on the site and if alarms would sound in an emergency.

Chairman Wheatley stated SWM Pond was the abbreviation for stormwater management pond, which is the area the water runoff drains to; that he did not believe the stormwater ponds would be covered; that the loading space is an area where trucks can pick up or deliver materials and the SCADA system monitors the operations and site and will provide notification in an emergency.

Ms. Stevenson stated a pond is proposed to be placed directly behind the proposed building on the site.

Mr. Whitehouse stated that hatching is a pattern that is placed on the pavement and the abbreviation CMF stands for concrete monument found and is a surveying reference to a property marker.

Mr. Tunnell stated that through the Keystone Bay development there are a series of stormwater management ponds that are designed to handle the runoff from the community, Banks Rd and Green Rd; that the ponds will be lined; that water will permanently remain within the ponds; that the ponds

will look similar to the ponds within Baywood Greens development; that the ponds within Baywood Greens have had no mosquito issues; that there will be sod edges; that a planted buffer of taller vegetation along the waterline; that the ponds and vegetation will be managed professionally; that the ponds are meant to be attractive; that a mosquito infected pond, located within a subdivision, would not be beneficial to the developer; that at the current plant, there is a weekly delivery of chlorine, as well as other materials; that deliveries are performed during normal business hours; that there will be no alarms sounding at the site; that alarms and notifications are provided through the SCADA system by text or email; that all operations will be performed within concrete tanks; that throughout Baywood Greens, upstream through the Keystone Bay development, there is a series of 24 groundwater monitoring wells, which are sampled on a regular basis; that the sample results are reported to DNREC; that as the spray irrigation is performed, the monitoring wells are ensuring the spray irrigation matches the uptake raise of the grass; that this will ensure wastewater is not being dumped and infiltrating the ground and there have never been any issues or violations issued from DNREC in the 23 years the existing plant has operated.

The Commission found that Mr. Mike Masciandro spoke in opposition to the Application; that he questioned if noise and smell concerns could be addressed with more objective information, and he stated that decibels would be an objective measure.

Chairman Wheatley stated he felt there may be comfort in knowing that the Applicant of the proposed facility also has substantial residential real estate investment made to adjacent properties of the proposed use and would be to the Applicant's financial advantage that the proposed use does not create any adverse impacts to adjacent properties.

Mr. Arijit Sarkar, who is the Senior Wastewater Project Manager with a background in wastewater management; that OSHA provides guidelines and specifications for employee noise protection; that the standard is 70 decibels within six feet of the equipment; that there are nine to 12 blowers; the Applicant is taking measures to further minimize perceivable noise; that that blowers are contained within noise-reducing boxes; that the noise-reducing boxes are placed in a secluded building, which will be called the Blower Building; that the blower building is designed to provide additional minimization of noise and sound; that with the proposed measures in place, the anticipation is no audible noise will be heard outside of the building; that there are two markers for smell, being hydrogen sulfide, which smells like sewer gas or rotten egg and mercaptans; that these gases are typically found in certain operations; that when water comes into the facility, there can be stagnant water; that stagnant water may cause a potential odor; that in the processing of the bio-solids there is a potential for odor; that both of the processes in the proposed design are sequestered in classified buildings; that this ensures no air exchange takes place with the outside; that all of the air from the sequestered buildings are processed through scrubbers; that the scrubbers have specifications to remove certain chemicals and gases; that the scrubbers will remove 99.9% of hydrogen sulfide from the air and these are the measures being proposed for the Application.

The Commission found that no one wished to speak by teleconference in support of or opposition to the Application.

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

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

Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2349 Lessard Builders

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (10 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS. The property is lying on the northwest side and the southeast side of Oak Orchard Road (Rt. 5), approximately 300 feet east of River Road (S.C.R. 312). 911 Address: 32768 Oak Orchard Road, Millsboro. Tax Parcel: 234-35.09-6.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Exhibit Booklet, the Engineering Evaluation Report, a letter from Sussex County Engineering Department Utility Planning Division, copies of the Notice of Decision letters for C/U 1088 and C/U 1863, the Staff Analysis, the DelDOT Service Level Evaluation Response, the Applicant's PLUS responses, the property legal description, the PLUS Comments, and the Applicant's wetland statement and Chapter 99-9(C) responses. Mr. Whitehouse advised the Commission that four letters were received in opposition to the Application.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application; that also present were Mr. Brian Lessard and Mr. Zachary Crouch with Davis, Bowen & Friedel, Inc. (DBF, Inc.); that an Exhibit Booklet was submitted which contained information about the Application, architectural renderings of the proposed buildings and additional information; that the Application is a Conditional Use request for multi-family building, to contain ten residential units; that the units would be held in a condominium form of ownership; that Lessard Builders is the contract purchaser of the land; that the land is owned by Mr. Andrew Walton and Ms. Carol Walton, who purchased the property in 2008; that the property is located within Oak Orchard, with frontage on the Indian River Bay of 130-ft.; that the property depth is 360-ft.; that the property contains 36,660 sq. ft., being approximately .84 acre of land; that the property is zoned MR (Medium-Density Residential), as well as most of the surrounding area; that that the MR zoned area, is surrounded by areas zoned as GR (General Residential) and multiple parcels zoned C-1 (General Commercial); that within the MR Zoning District multi-family structures may be permitted as a Conditional Use; that according to the 2019 Comprehensive Plan the site is located within the Coastal Area, which is considered a Growth Area; that the Plan further states that within the Coastal Area, a range of housing types should be permitted, including multi-family units; that medium to higher density, being of four to 12 units per acre, can be appropriate at certain locations; that the Applicant believes the proposed location would be appropriate for the medium to higher density; that Tidewater Utilities, Inc. will provide the site with central water; that sanitary sewer will be provided by Sussex County; that the Sussex County Engineering Department confirm, in a letter dated January 13th, 2023, that the site is with the County's Sewer District and that wastewater capacity is available for the proposed use; that there are no tidal or non-tidal wetlands located on the site; that site, as well as surrounding areas, is located within the special Flood Hazard Area Zone per the FEMA Flood Maps; that new construction within the Flood Hazard Area does require compliance with FEMA Coastal Construction Standards, as implemented through the County Building Code; that the proposed building design and base floor elevations will meet or exceed the requirements, fully complying with Article 18 of the Zoning Ordinance regarding construction in flood prone districts; that stormwater management facilities will be constructed in accordance with DNREC's sediment and stormwater regulations and will be reviewed and approved by the Sussex Conservation District; that there is no stormwater management existing currently on site; that the proposed building and the site will comply with all applicable requirements, being reviewed and approved by the Delaware State Fire Marshals Office; that the proposed building will have a sprinkler system; that the Applicant will consult with Tidewater Utilities, Inc. to determine if adequate water pressure is available for the placement of a

water hydrant in the area; that there is existing public water in the area, however there are no hydrants in the area; that if a hydrant cannot be placed in the area, a dry hydrant(s) would be installed on site; that DelDOT's Service Level Evaluation Response stated that a Traffic Impact Study (TIS) was not warranted, as the traffic impact would be considered negligible; that the entrance and improvements to the parking area will be designed in compliance with DelDOT standards; that the site is located within the Indian River School District; that the Indian River Volunteer Fire Company, Inc. will provide fire service for the site; that Station No. 1 for the Indian River Volunteer Fire Company, Inc. is located along Old Orchard Rd., being a few blocks away from the site; that the Applicant's reasoning for the appropriateness of the site is largely based on the property's land use history; that in 1994 a Conditional Use application (C/U 1088) was filed proposing a two-story building, with a bait & tackle shop, a sandwich shop, and a marina office located on the first floor and a residence on the second floor; that in addition to that application, there would be a fishing pier, provide 20 boats slips to be rented by the general public; that the minutes of that Application's Planning & Zoning Commission meeting indicated that the site had previously been the location of the Oak Orchard Hotel and Restaurant; that the Oak Orchard Hotel and Restaurant had the 520-ft. pier extending into the Indian River Bay; that he believed the hotel dated back to when Oak Orchard and Riverdale were popular resort destinations; that the old hotel fell into disrepair, being torn down in 1986; that a Conditional Use was approved the County Council in September 1994; that in 2010, a second Conditional Use (C/U 1863) application was filed by Mr. & Mrs. Walton; that the application proposed the relocation of the existing building on the site to the northern end of the site, which would be converted to a single-family residence; that at the location of the existing building, the application proposed to build a new three-story building containing four multi-family residential units located on the second and third floors, containing 2,000 sq. ft. of floor area; that on the first floor a 2,800 sq. ft. restaurant, a 700 sq. ft. waterfront patio and 1,600 sq. ft. retail store was proposed; that the new building proposed in that application would have a 30-ft. front yard setback from the bulkhead; that the patio would have a 20-ft setback from the bulkhead; that a boardwalk was proposed between the patio and the bulkhead; that the application proposed ten boat slips be provided along the existing pier, which would be available for lease to the general public; that the application proposed 30 parking spaces be provided at the north end of the property; that the Commission unanimously recommended approval of the application; that County Council unanimously approved the application for C/U 1863 in June 2010; that none of the construction proposed for C/U 1863 was started; that the Walton's land use plans for the property were derailed due to their son being in a horrific motorcycle accident, which resulted in catastrophic injuries to their son; that this event consumed all of the Walton's time, energy and resources; that the existing building, pier and bulkheading have all deteriorated over time; that the existing building was vandalized; that the current condition of the site is not an asset to the community; that the Applicant believes the current proposal will remedy the current situation of the site; that the previous Planning & Zoning Commission and County Council meeting minutes for both C/U 1088 and C/U 1863 were included in the record; that the previous meeting minutes from 1994 state the land fronts along a 20-ft. private road; that at the 1994 public hearing, the owner stated that there was no record of a road dedication across the property, but he would allow the road to remain open; that the minutes of the 2010 public hearing also noted the owner did not propose to close the roadway that runs across the property; that according to previous meeting minutes, the property is not two parcels separated by a road; that the minutes confirm there is no road crossing the site; that Oak Orchard Avenue terminates at the northeast and southwest boundaries of the property; that this is also confirmed by the Sussex County Tax Map which shows the site as one contiguous parcel; that that Sussex County online map reflect the public roads terminating at the property boundary; that the Applicant recognizes the use of the road is not only a convenience to the general public, but also provide access to Smiths Landing Rd.; that the Site Plan was designed with the road maintaining its current position; that a building is proposed along the waterfront portion of the site; that parking and a storage building are proposed on the northern portion of the site; that the Applicant proposes to pave the private road, as well as the

entrance onto Smiths Landing Rd.; that the pavement would be constructed to Sussex County standards; that the Applicant proffered in proposed Condition L to note on the Final Site Plan the perpetual easement granted to be used by the general public; that the site is bulkheaded; that the bulkhead wraps around the two corners of the property; that there is an existing pier, which is in a state of disrepair; that the pier does extend 500-ft. into the Indian River Bay; that there are 10 boat slips located at the end of the pier; that there is an existing building, with a front setback from the bulkhead of 26-ft.; that there is a covered porch area extending from the building to the bulkhead; that there is a shed and dumpster pad located next to the building; that the rest of the property is vacant; that a portion of the site had previously been used as a gravel parking lot; that in the current Application, the existing building is proposed to be removed; that the bulkhead and boat slips will be repaired and renovated; that the Applicant anticipates the pier length will be shortened; that the pier will maintain ten boat slips; that all repair and renovations would be in accordance with approval and permits from DNREC; that the new building would be located on the waterfront portion of the site, with a front setback of 30-ft. from the bulkhead; that the 30-ft. setback is the same setback requirement approved by Sussex County for the 2010 C/U 1863; that the proposed setback for the new building is greater than the setback of the existing building; that the new building is proposed to be three stories that will not exceed 42-ft.; that the first floor would contain four units, consisting of three two-bedroom units and one one-bedroom unit; that the second floor would have four two-bedroom units; that the third floor would have two four-bedroom units; that that one-bedroom unit would contain 1,146 sq. ft.; that the two-bedroom units would contain 1,350 sq. ft.; that the four-bedroom units would contain 2,400 sq. ft.; that the building will have elevator; that outdoor open space and access to the pier will be located on the bayside of the building; that each of the ten unit owners would require the right to the exclusive use of a designated boat slip; that the boat slips are not proposed to be rented to the general public; that the private road will be paved to Sussex County standards; that a sidewalk is proposed along the building side of the private road; that parking would be provided on the northern portion of the site; that 20 parking spaces are required; that 25 parking spaces are being provided, which will include two handicap spaces; that no on-site or on-road parking, within the property, would be permitted; that a 30' x 30' storage building is proposed at the north of the site; that the storage building will provide secured storage areas within the building for each of the ten unit owners; that in addition, there would be a community storage area for maintenance equipment and community items; that a 20' x 20' enclosure for trash receptacles will be located next to the storage building; that the three sides of the parking area, being located adjacent to properties of other ownership, would have a four foot high solid fence to screen vehicle headlights; that the parking area would have minimal, non-intrusive, directional lighting for safety purposes; that the building area, parking area, storage area, and trash receptacles would be attractively landscaped; that a detailed landscape plan will be submitted as part of the Final Site Plan review; that architectural renderings were submitted reflecting the bay view and street view of the building; that the building look and design is handsome in appearance, which will enhance property values of surrounding properties; that the residential units will be a high-end type of units; that the units will not contribute to workforce housing; that the units are intended to be owner occupied; that a part of ownership does involve the right to rent or lease a property; that there will be a private restriction placed within the condominium documents restricting rentals to at least a month or more; that weekly short-term rentals will not be permitted; that the Applicant proposes to replace a deteriorating building, pier and bulkhead, which would be replaced by an architecturally attractive building with appropriate landscaping and fencing, which are anticipated to significantly increase surrounding property values; that the proposed design allows for paving of the private road and a perpetual easement to be granted to the public, which will ensure that the road would never be closed by any future owner of the property; that in 2010, the County determined the site was appropriate for five residential units, a 2,800 sq. ft. restaurant, a 700 sq. ft. patio, 1,600 sq. ft. rental store and ten boat slips for lease; that the current Application is requesting to substitute five residential units in the place of the restaurant and retail store and the five residential units would have a

significantly less of an impact in terms of noise, odors, hours of operation, traffic impact, and impact on property values than the commercial uses previously approved.

Mr. Mears stated he had never seen a property where residents' parking was located on the other side of a road; that it is generous to offer the perpetual easement and paving; that he questioned if the Applicant proffered this to please the other residents and he did not care for parking being provided in the setback next to an undeveloped residential lot.

Mr. Hopkins stated he agreed with Mr. Mears regarding the private road; that he did not believe the road was heavily traveled; that he questioned if the previous Conditional Uses had expired, and he questioned if the property owner would have the right to deny access to the private road if desired.

Ms. Wingate stated she would anticipate the existing adjacent property owners would be happy to have the perpetual easement agreement in place.

Mr. Robertson stated he remembered the private road being an issue when Sussex County was placing public sewer in Oak Orchard; that the County has a franchised agreement with DelDOT to place sewer lines in areas where DelDOT right-of-ways are located; that during that time, the County was required to obtain an easement through the private property to provide sewer service to the homes located on Smiths Landing Rd. and he confirmed that the road located on the site is not a DelDOT maintained road.

Chairman Wheatley questioned the proposed elevator as he did not see it reflected on the floor plan.

Mr. Fuqua stated the private road has been permitted by previous owners to be used by the general public; that the general public have become accustomed to using the road; that he believed the road is important for safety reasons, allowing access for emergency vehicles; that the private road does provide the only access to Smiths Landing Road; that many people were under the impression the road was a public road; that the Applicant felt by offering the perpetual easement, it would provide any uncertainty regarding the road in the future; that Oak Orchard Avenue is not a highly traveled road; that both C/U 1088 and C/U 1863 had sunset; that as the situation currently stands, the road is not considered a public road; that the road is considered a private lane, therefore the property owner would have the right to close the road; that he anticipated, the closing of the private lane would warrant some type of litigation regarding prescriptive rights or adverse possession; that basic law states the possession would need to be adverse and hostile; that if someone was allowing the use of the private road, it would not be considered adverse or hostile; that the Applicant has taken measures in an attempt to avoid and solve the issue of closing the road; that the elevator was not reflected on the floor plan; that the elevator was not originally planned; that Mr. Lessard had conversations with others who highly suggested an elevator be placed and the flood plan design will remain the same with some slight alterations to accommodate the elevator.

The Commission found that one person was present who was neutral to the Application.

The Commission found that Mr. Patrick Miller, President of the Indian River Fire Company, was neutral to the Application, but spoke with concerns regarding the Application; that he personally owned the Lot 27 & 28 nearby the site; that he confirmed the sewer lines do run under the private road; that the private roadway has been in existence since the late 1960's into early 1970s; that the vacant lot was previously the parking lot for the previously existing restaurant; that he did confirm that a deed for the private roadway does not exist; that as of the week prior to the public hearing, DelDOT considered the private lane as a road; that in many documents, Oak Orchard Rd. and Oak Orchard

Avenue are synonymous; that the two roads are different roads; that when coming down Oak Orchard Avenue from Delaware Avenue, the road ends before Smiths Landing Rd.; that the parcels along Smiths Landing Rd. would be completely landlocked; that the fire company has grave concern, as Oak Orchard Avenue only has a 20-ft. road width; that the fire company requested the continuation of there being no parking along Oak Orchard Avenue from either direction to prevent difficulty of emergency apparatus getting by; that the fire company have four concerns; that Oak Orchard is not a hydrant community; that the nearest hydrant is located at Chiefs Rd and Oak Orchard Rd.; that it is also the location where the largest water main ends; that this location is approximately 1.25 mile from the site; that the fire company had been told the water pipes are not sufficient to hydrant that area from Chiefs Rd. down to the site; that at the fire house, there is no hydrant or fill station; that the fire company was required to place their own well and pumping station to fill their apparatus; that it is their understanding that there is no reasonable water suppression system that will accommodate the required flow; that the fire company had suggested the dry hydrant; that if a dry hydrant should materialize, the hydrant would require perpetual maintenance and operation due to sediment filling in the pipes; that the fire company has experience with dry hydrant systems at Massey's Landing Campground; that they have had frequent issues with the piping being filled in with sand and becoming unproductive; that the fire company was very pleased to hear the installation of sprinklers were proposed; that in the 1980s, Parcel 4 had caught fire; that at that time, there was a two-story dwelling located along the waterfront; that the fire company was not able to gain access to the property by aerial apparatus due to the existing overhead wires; that the overhead electrical wire run consistent with the road, as well as water and sewer piping; that in the past, tractor trailer trucks have pulled the telephone and utility wiring down from the Oak Orchard properties to the Smiths Landing properties; that the parcel is not easily accessible for any large sized apparatus, which would be needed to address emergencies of a three-story building; that the water runoff runs to the only drain, located at Oak Orchard Rd. and River Rd. intersection; that with heavy rain and/or high tide the road floods; that the fire company is neutral for the application; the fire house does feel their issues could be mitigated with proper planning; that Mr. Lessard and the current owners of the property have never indicated they intended to close the private road; that previous owners of the property had made threats to close the road; that the potential closing of the private road had always been a concern for the public; that Tidewater Utilities, Inc. is to maintain with the property's existing infrastructure; that the existing infrastructure is grossly insufficient; that at times, when the fire company accesses the hydrants along Banks Rd, Long Neck Rd. and School Lane, they have run dry; that the motors burn up because the water flow cannot be accommodated; that other resources were required to bring in water; that the small width of the roads to not allow for fire apparatuses to be parked side by side, which would cause an issue for homes along Smiths Landing Rd.; that the fire company currently has difficulty getting a F350 truck down Smiths Landing Rd.; that further down Smiths Landing Rd. are manufactured homes, which have a risk of burning more quickly than wood homes; that the fire company does have tank trucks; that the fire company also rely on mutual aid tankers from Millsboro and Lewes and those are the current comments and concerns of the Indian River Volunteer Fire Company.

Ms. Wingate questioned if any conversations had been started regarding the anticipated utilities or burying the existing overhead lines.

Chairman Wheatley questioned if there was an adequate amount of water being supplied to the site; that he questioned if the Applicant's pump will collapse the pipes once the pump would come on and questioned if the stormwater management system will be located underneath the parking lot area.

Mr. Crouch stated DBF, Inc. had spoken with Tidewater Utilities, Inc.; that they will be required to install a fire pump into the dwelling to ensure the water pressure remains consistent, as well as the duration; that the existing restaurant currently has a fire pump and a sprinkler system; that these

measures are typical requirements when there are not hydrants in the area; that a dry hydrant is an additional support; that he had not had any conversation regarding burying the overhead lines; that he believed it would be in everyone's best interest to bury the lines; that typically on new projects, the lines are buried, as there would be a new transformer involved; that the size of the pipes are between four inches to six inches; that DBF, Inc. has performed this with four inch piping in schools; that he could not confirm until they obtain pressure testing results; that 90% of times, the fire pumps will allow and keep up with the requirement; that the Applicant will be required to obtain State Fire Marshal approval for the building, as well as the property site before construction could begin; that there are a number of things that are required to happen first, but based on preliminary numbers they feel the requirements can be met with a fire pump; that the stormwater management system will be located underneath the parking area; that there is no stormwater management within that area currently and placement of the proposed stormwater will help the previously mentioned issues.

The Commission found that seven people spoke in opposition to the Application.

The Commission found that Reverend Alan Miller spoke in opposition to the Application; that he had been a resident for over 30 years; that he has been the Pastor for Community Church of Oak Orchard for the past 32 years; that he is also a firefighter; there are systemic flooding issues in Oak Orchard; that there have been times where they had to sandbag the fire house, which is located .25 mile from the river; that when flooding happens, the church works closely with the fire company; that the fire company purchased a large army-style truck which is used to help people who did not evacuate that area in time; that many places provide refuge in those time for those in need; that the church is not equipped to provide overnight accommodations; that rescued people are brought to the church and taken care of for a few hours until they can be picked up or taken to another shelter location; that when flooding happens, nearby residents tend to bring their vehicles to the church; that the church parking is limited; that parking at the fire station is limited; that parking areas used within dry weather are limited; that many people drop their vehicle off and leave without permission; that when the fire company operate their apparatus to deliver people to the church there is limited access; that an additional 10 to 20 vehicles would add a fair number of vehicles to the issue; that the density within the Oak Orchard area, particularly at the site location, tend to be higher than normal; that in the 1960s and 1970s one could purchase a lot that was 100 ft. by 60 ft.; that the church currently sits on a parcel comprised of 12 lots; that most of Oak Orchard is made up of homes located on very small lots; that this has created there to be minimal to no parking anywhere; that the roads are smaller in size; that the surrounding area to the site tends to be considered an lower-income area; that many younger families tend to live in the area; that there is a lot of children playing and bicycle traffic in the area; that due to this, traffic is a big concern; that DelDOT's consideration that the traffic impact will be minimal may be true when looking at Rt. 24 or Old Orchard Rd.; that within that immediate area of the site, 20 additional vehicles may be more than a minimal impact; that the fire company placed an addition to their building; that the fire company was not able to sprinker system the fire company due to the water line being four inches along Old Orchard Rd.; that a fire hydrant uses a six inch waterline; that the fire company uses six inch fire hoses; that you cannot pull six inches from a four inch waterline; that these concerns have existed for a long time and he felt the mentioned issues should be taken into consideration.

The Commission found that Mr. Kurt Hepler spoke in opposition to the Application; that he also submitted a letter of opposition on behalf of his neighbor, who was not able to attend the hearing; that the Zoning Ordinance does not provide provisions for the proposed type of use; that the proposed use would be better suited with C-4 (Planned Commercial District) than to have it within the MR (Medium-Density Residential) District; that after reviewing the record, and he requested the Commission recommend denial of the Application.

The Commission found that Mr. Ira Brittingham spoke in opposition to the Application; that he has lived in the Oak Orchard area since 1957; that he had been through the storm of 1962 and hurricane Sandy and every other flooding event within the area; that the proposed townhomes can be constructed to be safe from the water; that he had safety concerns for residents during evacuation; that he does not understand how the proposal of construction and asphalt will improve the flooding situation; that DNREC had performed a survey of the Oak Orchard area; that at that time, the cost to correct that area of flooding was going to cost \$15 million; that prices have increased since that time and people will move here to live by the beautiful river, without realizing the river can turn evil.

The Commission found that Ms. Margaret Hurt spoke in opposition to the Application; that she lives adjacent to the property; that she is concerned about the proposed parking adjacent to the residential lots; that she is concerned about the potential noise; that the area is quiet; that another 20 to 30 vehicles with no parking on the road; that she questioned where visitors will park in the few additional parking spots are filled; that she is concerned about the safety of the area; that she suggested the potential of the project being made smaller; that the idea is appealing and improvements would enhance the area, however, she felt 10 units was excessive.

The Commission found that Mr. Mike Masciandro spoke in opposition to the Application; that the site is in horrible condition; that he believes a sentiment among many nearby residents is that 12 years ago there was a hearing before the Commission, with a nice proposal, yet currently the site sits in a state of disaster; that the existing pier has boards blowing off of it; that the previous Conditional Use (C/U 1863) had conditions placed upon the approval which required the Applicant to comply with State and County regulations; that the conditions have not been met; that they have complained to DNREC; that DNREC stated the pier was built and grandfathered before the regulations were written; that residents get stuck in these types of situations, which has resulted in a lot of apprehension; that primary wires run through Oak Orchard Avenue and down Smiths Landing Rd.; that primary wires cannot be placed underground, especially in areas where the water table is four feet below the grade; that he would like to understand why the proposal is for 10 units; that the road only has eight houses located on it; that the proposed units would more than double the amount of existing people living along the road; that the area is concentrated; that he requested the Commission to place similar conditions as those placed on the previously approved Conditional Use; that he requested the Commission get road improvements to Oak Orchard Avenue and two vehicles cannot pass on the road.

The Commission found that Mr. Harry Jarmon spoke in opposition to the Application; that his property is located across from the proposed dumpsters; that his primary concern is safety; that he agrees with the other concerns mentioned as well; that 200 single-family units are being constructed north of the site, along Oak Orchard Rd.; that with both of the projects will create additional traffic; that he felt the road is traveled frequently; that he confirmed the wires had been torn down along the road; that a front-end loader will be required to remove the dumpster; that the parking lot is tight quartered and will cause a safety concern for large vehicles that need to access the area; that he had a major concern to the location of the dumpster across from his property; that dumpsters are not clean, frequently omitting odors and he is pleased with the aesthetics of the proposed building.

The Commission found that Ms. Jodi Hawk spoke in opposition to the Application; that she agreed with the previously mentioned concerns; that Oak Orchard Road only allows for one vehicle to travel the road; that when two vehicles pass, one vehicle must pull over into another person's property; that she is concerned for bicyclists and pedestrian safety; that the current community is very quaint; that the increased traffic would be an adjustment; that the roads are not in the best condition with large pot holes; that she does not like the location of the parking lot and the potential noise it will cause; that she does not like the location of the dumpsters; that when the area floods, she is stuck at her property; that

River Rd. and Delaware Avenue both flood; that currently, many adjacent property owners park their vehicles at the location of the proposed parking lot because it is a higher area to avoid flooding; that she requested the Commission visit the property; that the current residents all know each other and she requested the Commission give consideration to the mentioned concerns.

Ms. Wingate stated the streets are State maintained by DeIDOT and it would be DeIDOT's authority to require the developer to provide road improvements.

The Commission found that three people spoke by teleconference in opposition to the Application.

The Commission found that Ms. Cindy Battles spoke by teleconference, in opposition to the Application, with concerns regarding the number of boat slips, the location of the transformer and poles for the electrical wires, the location of proposed pavement along her property, the inconsistency of surveys for the area and flooding.

The Commission found that Mr. David Harper spoke by teleconference, in opposition to the Application, with concerns regarding the road width of Oak Orchard Rd. which may cause potential difficulty accessing his property with a truck or boat trailer.

Mr. Fuqua, Esq. stated that the 1994 Conditional Use had proposed 20 boat slips; that the 2010 Conditional Use had proposed 10 boat slips; that permits were issued for the proposed 10 boat slips, which are still valid permits, and the current proposal is for 10 boat slips.

The Commission found that Ms. Diep Koly spoke by teleconference, in opposition to the Application, with concerns regarding the proposed size of the Application, the increased traffic, the electrical wires, the width of the roads and she objected to the proposed number of units for the project.

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

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

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

Meeting adjourned at 6:46 p.m.

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