

THE MINUTES OF THE REGULAR MEETING OF MARCH 10, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, March 10, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse stated the application for C/Z 1962 Jeff-Kat, LLC was not included in the Agenda and the Application will be re-noticed for an upcoming public hearing in April 2022.

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

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of the February 10, 2022, Planning and Zoning Commission meetings as circulated Motion carried 5-0.

OTHER BUSINESS

(2021-13) Baylis Estates Phase II

Final Subdivision Plan

This is a Final Subdivision Plan to amend the existing cluster subdivision for Baylis Estates Phase II (2017-01) to subdivide 130.52 +/- acres into fifty-one (51) single-family lots, private roads, and open space. The Applicant seeks to redesign a portion of the existing approved subdivision to add fourteen (14) additional lots for a total of one-hundred and fifty lots (150) between existing and previously approved Phase I (2004-55) and this updated Phase II. The Preliminary Subdivision Plan for Phase II was previously approved by the Planning and Zoning Commission at their meeting of Thursday, June 10, 2021. The property is located on the northeast side of Mount Joy Road (S.C.R. 297). The Commission has been provided with electronic copies of the Phase II proposal as well as the updated Record Plan showing a total of 150 lots in their packet for this evening. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-29.00-42.00. Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

The Peninsula on Indian River Bay MR-RPC (Phase 11 – Still Waters)

Revised Site Plan

This is a Revised Site Plan for the construction of seventy-nine (79) single-family detached condominium units for Phase 11 of The Peninsula on Indian River Bay (C/Z 1475). The Peninsula is a Residential Planned Community that was approved by the Sussex County Council at their meeting of Tuesday, November 19th, 2002, through Ordinance No. 1573. Phase 11 received final approval for forty-eight (48) single-family lots by the Sussex County Council on Tuesday, November 13th, 2007. Lastly, Change of Zone No. 1936 was approved by the Sussex County Council at their meeting of December

7th, 2021, through Ordinance No. 2818. This Ordinance amended Condition #1 of Ordinance No. 2690 and allowed for an increase in the maximum number of single-family detached condo units within the RPC from 388 to 471 (83 units) total. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: MR-RPC (Medium Density Residential – Residential Planned Community). Tax Parcel: 234-30.00-317.00. Staff are currently awaiting agency approvals and the Site Plan will be required to be brought back before the Commission for a final determination and final approval.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Revised Site Plan as preliminary. Motion carried 5-0.

(S-21-34) Lincoln Retirement Community

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 42,000 +/- square foot assisted living facility, thirty (30) single-family detached cottages, a proposed walking trail, and other ancillary improvements. The proposal was the subject of a previous Board of Adjustment Application (BOA Case No. 12320) for a special-use exception to operate a convalescent home, nursing home, and/or home for the aged. The Special Use Exception was approved by the Board of Adjustment at their meeting of Monday, June 17, 2019, of which the Findings of Fact were approved and signed on August 6, 2019. It should be noted that a limited one-year time extension was sought for the existing Special Use Exception, which was granted by the Board of Adjustment at their meeting of Monday, January 25, 2021. This action extended the date of expiration from the original approval date to August 6, 2022. The property is located on the north side of Johnson Road (S.C.R. 207) in Lincoln, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 330-15.00-33.01. Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

(2004-55) Baylis Estates (Phase I) Amenities

Amenities Plan

This is a Final Amenities Plan for the existing Baylis Estates Phase I subdivision. The plan proposes a 4,1400 square foot clubhouse, 1,215 square foot in-ground pool and fencing, multipurpose courts, and twenty-one (21) parking spaces. The site is located between Phases I and II as Lots 122 through 126 are currently proposed as part of Phase II. The Preliminary Amenities Plan for the subdivision was originally considered by the Planning and Zoning Commission at their meeting of Thursday, May 27, 2021, where the Commission had approved the plan with the condition that all proposed landscaping be included on the plans. The Final Amenities Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-29.00-42.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Amenities Plan as final. Motion carried 5-0.

(2018-20) Tanager Woods Amenities

Amenities Plan

This is a Preliminary Amenities Plan for the existing Tanager Woods Subdivision for the construction of a proposed 2,516 square foot clubhouse, a 4,160 square foot multi-use court, and a 2,531 square foot

pool with a 6,707 square foot pool deck. Included in the site plan are 30 parking spaces, sidewalks, and other site improvements. The property is located on the east side of Fieldfare Lane and the west side of Winona Lane within the subdivision. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-6.00-85.01. Staff are in receipt of all agency approvals; therefore, the plan can be considered for preliminary and final approval.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Preliminary Amenities Plan as preliminary and final. Motion carried 5-0.

(S-18-89) Friendship Creek Amenities

Amenities Plan

This is a Preliminary Amenities Plan for Friendship Creek (Conditional Use No. 2142) for the construction of a proposed 1,400 square foot pool and a 276 square bathroom and pool equipment building with an outdoor shower. Included in the site plan are 19 parking spaces, sidewalks, and other site improvements. The property is located on the south side of Dundee Street and the east side of Coldstream Street within the existing subdivision. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: GR (General Residential District). Tax Parcel: 134-16.00-39.00. Staff are awaiting agency approvals.

Ms. Stevenson questioned how many lots were within the subdivision.

Mr. Whitehouse stated there were 133 single-family lots.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Preliminary Amenities Plan with final approval by staff upon the receipt of all agency approvals. Motion carried 4-1. Mr. Hopkins – Yea, Ms. Stevenson – Nay, Chairman Wheatley – Yea, Ms. Wingate – Yea, Mr. Mears - Yea

Lands of Kim Ireland

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Plan for the subdivision of a 5.00 acre +/- parcel of land into (1) lot and residual lands off of a proposed 50-foot ingress/egress easement. Proposed Lot 1 consists of 1.23 acres +/- and the residual lands consist of 3.77 acres +/- . The property is located on the east side of Atlanta Road (Route 30). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 131-8.00-40.17. Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 50' easement. Motion carried 5-0.

OLD BUSINESS

2021-06 – Coral Lakes (F.K.A. Coral Crossing) - A Coastal Area cluster subdivision to divide 152.32 acres +/- into 315 single-family lots to be located on a certain parcel of land and lying and being in Indian River Hundred, Sussex County. The property is located on the southwest side of Robinsonville Road (S.C.R 277) approximately 0.65 mile south of Kendale Road (S.C.R. 287) Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District).

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

Ms. Stevenson stated a lot of people have stated the Commission is asleep at the wheel; that they worked very hard on the motion and attempted to listen to everyone as much as they could.

Ms. Stevenson moved the Commission grant preliminary approval for Subdivision for 2020-06 Coral Lakes with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision of 315 Lots within the AR-1 Zoning District and the Coastal Area. This includes 11 “Bonus Density” lots that may be approved under Section 115-25 B (3).
2. There was evidence in the record that while there are no jurisdictional wetlands, the property does contain ground that is regularly wet. This is supported by the soil information in the record provided by DNREC. Also, a cluster subdivision must be designed so that lands worthy of preservation should be identified first, including woodlands so that the potential development area preserves these areas. The Zoning Code does not prohibit the development of wooded areas. But it also does not mandate the approval of bonus density lots that will cause the removal of additional forest. It is illogical to approve bonus density lots that remove forested areas here and receive money to preserve open space somewhere else. Elimination of these 11-bonus density lots would preserve more woodlands within this subdivision.
3. The proposed subdivision without any bonus density lots will have no more than 304 lots on 152.34 acres.
4. With the elimination of the bonus density lots and subject to the conditions imposed by this Preliminary Approval, the project complies with the Zoning Code. The clustered subdivision will satisfy the permitted density within the AR-1 Zone.
5. The proposed development will comply with all DeDOT roadway entrance requirements. It will be part of the Henlopen Transportation Improvement District.
6. The proposed subdivision meets the purpose and standards of the Subdivision Code.
7. Section 99-9C of the Subdivision Code requires the Commission to consider 17 different items relating to the site plan. While the Applicant has addressed the requirements of Section 99-9C of the Code, there are conditions of this approval that are based upon those 17 items.
8. The subdivision proposes to contain approximately 75 acres of open space and more than 30% of this will be contiguous open space.
9. The project will be served by central water and sewer.
10. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is permissible in this Area according to the Plan.
11. This subdivision is based on a design that is superior to a standard subdivision. The 304 three-quarter-acre lots designed as a standard subdivision with all the roadways and stormwater management facilities would result in the preservation of little or no open space, woodlands, or other areas. The cluster design preserves a substantial amount of open space and buffering that would not be achieved within a standard subdivision.
12. This subdivision design, with the conditions and limitations of this approval, complies with the design process outlined in Section 115-25 of the Zoning Code.
13. This preliminary approval is subject to the following:
 - A. There shall be no more than 304 lots within the subdivision. The eleven-bonus density lots are denied.
 - B. The area where lots 182 through 186 and the Waverly Lane cul-de-sac are located on the preliminary site plan shall remain undisturbed. This area is adjacent to the jurisdictional wetlands, and this will preserve the existing forest in that location. Lots 1 through 5 and Lot 57 shall be eliminated to provide a greater separation between the subdivision lots

- and Robinsonville Road. No lots shall contain any Federal or State wetlands. All Federal or State wetlands lines shall be clearly shown on the Final Site Plan.
- C. The Final Site Plan shall confirm that at least 30% of the site's open space is on one contiguous tract of land.
 - D. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - E. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - F. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
 - G. There shall be a buffer that is at least 25 feet wide from all non-tidal wetlands. There shall be a minimum disturbance of trees and other vegetation within these buffer areas. Where trees currently exist in these buffer areas, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. The "Limits of Disturbance" shall be indicated on the Final Site Plan. The development shall also comply with the payment of all required fees associated with the Henlopen Transportation Improvement District.
 - H. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - I. Sidewalks and walkways shall be installed as shown on the Preliminary Site Plan with a connection to the DelDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided. No lights shall be installed along Waverly Drive, Summer Breeze Lane, Coral Lakes Drive, and Pinegrove Lane nearest Aintree Drive in the adjacent development to mitigate glare into that development.
 - J. Amenities including a pool and clubhouse shall be constructed and open to use by residents of this development on or before the issuance of the 200th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
 - K. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
 - L. Street design shall meet or exceed Sussex County standards.
 - M. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - N. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and 7:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - O. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.

- P. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. Both of these documents shall include a similar notice that (1) the site is adjacent to an airfield and the activities and noise that may occur there, and (2) that hunting activities may also occur on nearby properties.
- Q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- R. If any gravesites are found within the development, the Applicant shall immediately notify the Delaware State Historic Preservation Office and follow the requirements of that Office.
- S. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Mr. Robinson stated there has been a lot of discussion between him, Ms. Stevenson, and all of the Commissioners regarding the legal standards that apply to subdivisions; that unless one does this all the time, being immersed in it, understanding the law involved, one might not anticipate; that subdivisions, by Delaware Code and Delaware Law, the Delaware Supreme Court, they are governed by the Sussex County’s Subdivision and Zoning Code; that if the request is a permitted use and meets all the requirements of the Zoning and Subdivision Code, it is permitted; that the Commission can condition aspects of the subdivision; that the conditions must be based upon the record; that a lot of people, understandably so, feel like subdivision requests should not be approved in certain locations, or should not be approved due to the amount of traffic, or due to the current existence of other subdivisions in the area or due to just not wanting the subdivision, wishing to leave the land vacant; that he believes the Commission understands that perspective of things, however, that is not what the law states; that he has said through his years, the time to get involved with land use is not at the time of a public hearing or a specific application; that the time to get involved is at the time of assessing the Comprehensive Plan or with County Council, who has the right to adopt ordinances and make the laws in which the Commission must follow; that when the Commission acts on a subdivision, they are simply following the law; that he realizes this fact sometimes places the five Commissioners in a hard place, because they are stuck within the guardrails of what the law states; that the people in the audience may not appreciate or understand it; that this is the reason he wanted to take the time to provide explanation; that subdivisions fall under this category; that when the Commission take on matters like Change of Zones, Conditional Uses or RPC’s, there is a lot more discretion in those cases; that those requests are a change from the underlining zoning; that if a subdivision is being applied for within AR-1 Agricultural Residential Zoning District, the Commission looks at the rules for AR-1 and if the subdivision complies with the rules, subject to conditions, the Commission moves forward; that if the request is to change from AR-1 to MR Medium Residential or GR General Residential, which are different zoning classifications, the Commission does have a lot more discretion; that saying this does not imply it is a rubber stamp on subdivision applications; that he does not wish to give that incorrect impression either; that it is incumbent on the applicant and the opposition to make a good record, which would hold up on appeal, if appealed in court; that the Commission cannot make a

decision based on opinion; that decisions must be made based on the record and applying the record to the law; that it really does set guardrails on subdivision requests; that there has been a lot of interest in this Application and other applications and he suggested everyone stay involved with the Comprehensive Plan process and County Council.

Ms. Stevenson encouraged everyone to research Sussex County Land Trust.

Motion by Ms. Stevenson, seconded by Ms. Wingate to recommend preliminary approval of 2021-06 Coral Lakes for the reasons and conditions stated in the motion. Motion Denied 4-1.

The vote by roll call: Mr. Hopkins – Nay, Ms. Stevenson – Nay, Chairman Wheatley – Yea, Ms. Wingate – Nay, Mr. Mears - Nay

2021-19 East Gate – A Coastal Area cluster subdivision to divide 36.71 acres +/- into 88 single-family lots to be located on certain parcels of land and lying and being in Baltimore Hundred, Sussex County. The properties are located on the southwest side of Zion Church Road (Route 20), approximately 0.76 mile southeast of Evans Road (S.C.R. 383). Tax Parcels: 533-11.00-45.05, 45.06, 45.07 & 45.08. Zoning: GR (General Residential District).

The Commission discussed this Application which has been deferred since February 10, 2022.

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

C/U 2288 Broom Solar Partners

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 72.00 ACRES, MORE OR LESS. The property is lying on the north side of Frankford School Road (S.C.R. 92) approximately 0.55 mile west of Pyle Center Road (S.C.R. 20). 911 Address: N/A. Tax Parcel: 533-5.00-47.00

The Commission discussed this Application which has been deferred since February 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2288 Broom Solar Partners, LLC for a solar field in an AR-1 District based upon the record made at the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms.
3. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties.
4. The proposed solar generation facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
5. No significant noise, dust, or odor will be generated by the facility.
6. This recommendation is subject to the following conditions:

- A. No storage facilities shall be constructed on the site.
- B. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
- D. The site shall be secured by fencing with a gate with a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
- E. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.
- F. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval for C/U 2288 Broom Solar Partners for the reasons and conditions stated in the motion. Motion carried 5-0.

C/U 2284 Eastern Shore Natural Gas Company

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF C/U 889 (ORDINANCE NO. 536) FOR PUBLIC UTILITIES OR PUBLIC SERVICES USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 29.98 ACRES, MORE OR LESS. The property being a landlocked parcel accessed off Emma Jane Lane, approximately 0.33 mile south of E. Newton Road (S.C.R. 584). 911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville. Tax Parcel: 131-10.00-99.00

The Commission discussed this Application which has been deferred since February 10, 2022.

Mr. Hopkins moved the Commission to recommend approval of C/U 2284 Eastern Shore Natural Gas Company for an expansion of Conditional Use No. 889 approved as Ordinance No. 536 for public utilities or public service based on the record made during the public hearing and for the following reasons:

1. This is the expansion of an existing natural gas facility within a property that is owned by the Applicant. The original conditional use was approved by Sussex County Council on September 27, 1988, as Ordinance No. 536, and the property has been used as a natural gas facility ever since.
2. There are other conditional uses in the vicinity. These include Conditional Use #1955, which allowed the State of Delaware and DelDOT to operate a maintenance yard. This limited expansion of an existing Conditional Use in this location is appropriate.
3. This limited expansion will permit a point of connection into the Applicant's existing gas line infrastructure. It will allow renewable natural gas, compressed natural gas, or liquified gas to be introduced into the existing pipeline system.
4. The proposed use will have minimal above-ground facilities. These new facilities will be smaller in comparison to the existing facilities on the site.
5. No wetlands, water bodies, or other sensitive resources are located on the site, and it will not require any water or sewer connections.

6. The limited expansion will not have a detrimental impact upon the physical, economic or social environment of the area.
7. This Conditional Use to allow the limited expansion of the existing natural gas facility on this site promotes the convenience, order, prosperity, and welfare of residents and businesses of Sussex County by providing improvements to natural gas infrastructure within an existing natural gas facility.
8. Fire protection will be provided by the Bridgeville Volunteer Fire Department, which is located approximately one-half mile from this site.
9. This recommendation is subject to the following conditions:
 - A. The area of this use shall be fenced with a locked access gate. A “knox box” or similar means of access shall be established on the site for use by emergency responders.
 - B. The site shall be marked with signage identifying the owner of the facility and emergency contact information.
 - C. The use shall comply with all Federal and State requirements governing the use.
 - D. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2284 Eastern Shore Natural Gas Company for the reasons and conditions stated in the motion. Motion carried 5-0.

C/U 2285 Ashley DiMichele

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL ZONING DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS.

The property is lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257). 911 Address: 26182 Cave Neck Road, Milton. Tax Parcel: 235-21.00-48.00

The Commission discussed this Application which has been deferred since February 10, 2022.

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

C/U 2305 Barnhill Preserve of DE, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 (AGRICULTURAL RESIDENTIAL DISTRICT) FOR A ZOOLOGICAL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.24 ACRES, MORE OR LESS.

The property is lying on the northeast side of Peppers Corner Road (S.C.R. 365), approximately 0.61 mile southeast of Roxanna Road (Route 17). 911 Address: 34215 Peppers Corner Road, Frankford. Tax Parcel 134-15.00-124.00

The Commission discussed this Application which has been deferred since February 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2305 Barnhill Preserve of Delaware, LLC for a Conditional Use to operate a Zoological Park in an AR-1 Zoning District based upon the record and for the following reasons:

1. The property is zoned AR-1 Agricultural Residential, which anticipates the keeping of live animals in certain situations. This use is similar to the types of uses that are expected within the AR-1 Zoning District. The Sussex County Zoning Code allows the keeping of various types of animals for personal use and larger farming operations on properties greater than five acres.
2. The property is in the Coastal Area according to the Sussex County Comprehensive Plan. The Plan does not prohibit this type of small business use in this Area.
3. The Applicant has stated that the use as a Zoological Park is intended to be educational and it will be visited by school-aged children from all over Sussex County.
4. The use, with the conditions and limitations placed upon it, will not have an adverse impact upon neighboring properties, roadways, or the community in general.
5. The use is regulated by the United States Department of Agriculture with regular inspections, and it is licensed by the State of Delaware.
6. The use will be connected to Sussex County sewer.
7. The use, as a small Zoological Park, will be a benefit to residents and visitors of Sussex County by providing a nearby location for residents, visitors, and schoolchildren to learn about the animals kept in the park without having to otherwise travel to Wilmington, Salisbury, or other out-of-state locations for such an educational experience.
8. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a Zoological Park.
 - B. There shall not be any parking located within the setbacks. All parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.
 - C. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - D. The Zoological Park shall only be open to the public between the hours of 6:30 am until 9:00 pm.
 - E. The Applicant has stated that the Zoological Park must have 8-foot-tall fencing. This will require a variance from the Sussex County Board of Adjustment.
 - F. All lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - G. The location of the Tax Ditch and Tax Ditch Right of Way shall be shown on the Final Site Plan. No fencing or structures shall be located within the Tax Ditch Right of Way.
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - I. The use shall comply with all DelDOT entrance and roadway improvement requirements.
 - J. Any expansion of the Zoological Park into the area designated on the Preliminary Site Plan as "Area Reserved for Future Expansion" north of the Beaver Dam Canal Tax Ditch require another public hearing.
 - K. All locations for the temporary storage of animal waste shall be fully enclosed and centrally located on the site. These locations and the method of the enclosure shall be clearly shown on the Final Site Plan.

- L. Any outdoor entertainment and music or the use of outdoor speakers shall end at 9:00 p.m. each night. All outdoor entertainment and music or outdoor speakers shall be oriented away from the residential properties adjacent to the site.
- M. The failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.
- N. 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 2305 Barnhill Preserve of DE, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

PUBLIC HEARINGS

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

C/Z 1953 Brasure Holdings, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS. The property is lying on the northwest side of Lighthouse Road (Rt. 54) approximately 0.27 mile southwest of Zion Church Road (Rt. 20). 911 Address: 35131 Lighthouse Road, Selbyville. Tax Parcel: 533-19.00-13.02.

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

The Commission found that Mr. Ray Blakeney spoke on behalf of the Application – C/Z 1953 Brasure Holdings, LLC, and also present was Ms. Heather Brasure, the wife of Mr. Justin Brasure, Vice President.

Ms. Brasure stated they are seeking a rezoning of the proposed property, which is located between their current business on property zoned as C-1 (General Commercial) and the property owned by Mr. David Brasure and Ms. Peggy Brasure; that the property they are seeking to rezone is owned by Brasure Holdings, LLC, which is owned by Mr. David Brasure and Ms. Peggy Brasure; that the property is leased to Brasure's Carpet Care, Inc.; the subject property is currently zoned AR-1 (Agricultural Residential); that the request to have the property rezoned to C-2 (Medium Commercial); that they request this rezoning to allow an 80'x100' storage facility; that due to the new development in the area and increased production volume, they have outgrown their current building; that by adding the proposed storage facility, they would be able to purchase padding and chemicals in bulk; that purchasing in bulk would allow them to purchase materials at a discounted rate; that they currently have two high-top sprinters which do not fit in the current garages; that the proposed building would be able to accommodate the high-top vehicles, in addition to the two vehicles used to provide estimates; that they require a climate controlled room for the storage of rugs and cushions which are awaiting delivery, as well as rugs being stored for their customers; that they currently employ 14 full-time employees and the business seems to grow every day.

Mr. Ray Blakeney stated the current business has existed at the current site for almost 40 years; that the existing business property is currently zoned C-1 (General Commercial); that business is growing and they

have a need to expand; that they desire to make the zoning consistent with what is currently existing; that they have had initial contacts with DeIDOT for a Letter of No Contention and they have had a preliminary meeting with Sussex Conservation District regarding stormwater management.

Ms. Wingate requested to confirm the current business is located within C-1 Zoning and she stated she recognizes their need to expand.

Mr. Blakeney stated the current business is located within the C-1 commercially zoned portion of the property.

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

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

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

Mr. Mears moved the Commission recommend approval of Change of Zone 1953 for Brasure Holdings, LLC. 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 Lighthouse Road. It is adjacent to the Applicant’s property and business that is zoned C-1 and adjacent to other lands owned by the Applicant. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location along Lighthouse Road will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is mostly in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval, of C/Z 1953 Brasure Holdings, LLC. Motion carried 5-0.

Chairman Wheatley stated the next four Applications are related to Henlopen Properties, LLC; that the Applicant has requested to have the presentation consolidated; that the Commission approved the request, and each Application will be voted on separately at the end of the public hearing.

2022-01 Henlopen Properties, LLC – A Coastal Area subdivision to divide 43.777 acres +/- into two hundred and sixty-seven (267) lots on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is located on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). Tax Parcel: 335-8.00-37.00 (portion of). Zoning: MR (Medium Residential District).

Mr. Whitehouse stated that submitted into the record is the Applicant's Subdivision Plan, the Applicant's exhibit booklet, the Applicant's Chapter 99-9C response, a waiver request letter from the Applicant in relation to buffers, a letter from the Sussex County Engineering Department Utility Planning Division, the Traffic Impact Study (TIS) and the DelDOT response to the TIS, three letters of support, two letters of opposition and five mail returns.

C/Z 1967 Henlopen Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS. The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

C/Z 1968 Henlopen Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS. The property is lying on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

C/U 2334 Henlopen Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS. The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a

number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse, outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent

Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any

architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes; that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided

special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undo burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undo burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that

they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mail centers, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of

impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT

has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains;

that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with other land areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the

homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there is other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plans in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage.

The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were placed in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area

would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to 60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originate from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy.

Ms. Wingate questioned the potential to move the location of the stormwater management pond.

Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

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

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

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

Meeting adjourned at 7:52 p.m.

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