

THE MINUTES OF THE REGULAR MEETING OF MARCH 11, 2021

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

The meeting was called to order at 3:05 p.m. with Vice-Chair Hoey-Stevenson presiding. The following members of the Commission were present: Mr. Robert Wheatley – Absent, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Seth Thompson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christen Scott – Planner I and Mr. Nicholas Torrance – Planner I.

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

Mr. Whitehouse noted that the public hearing for C/Z 1909 Bay Developers, LLC (Twin Cedars, LLC) will be removed from the agenda and will advertised for a public hearing at a future date.

Motion by Mr. Hopkins, seconded by Ms. Wingate to accept the removal of C/Z 1909 Bay Developers, LLC (Twin Cedars, LLC). Motion carried 4-0.

Mr. Whitehouse requested that Old Business be moved ahead of Other Business on the agenda.

Motion by Mr. Mears, seconded by Ms. Wingate to move Old Business ahead of Other Business on the agenda. Motion carried 4-0.

Motion by Mr. Hopkins seconded by Mr. Mears and carried unanimously to approve the revised Agenda. Motion carried 4-0.

Motion by Ms. Wingate, seconded by Mr. Hopkins to approve the Minutes of the February 11, 2021 Planning and Zoning Commission meeting. Motion carried 4-0.

OLD BUSINESS

Mr. Thompson recused himself from participating in the items under Old Business.

2019-30 Pelican Point 4-5

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

The Commission discussed this application which has been deferred since February 11, 2021.

Mr. Mears stated he was not present for the public hearing but listened to the audio and is prepared to participate in the vote.

Ms. Wingate moved that the Commission grant preliminary approval for 2019-30 – Pelican Point 4-5 Subdivision based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a resubdivision of cluster subdivision within the AR-1 Zoning District. Phases 4 & 5 of the Pelican Point subdivision were previously approved for 189 lots on 95.197 acres. The Applicant has acquired 14.793 acres of adjacent lands and seeks to increase the acreage and number of units in Phases 4 & 5.
2. The subdivision will have no more than 219 lots on 109.99 acres. This density does not exceed the maximum density that is permitted in the AR-1 zone.
3. All lots will be at least 7,500 square feet in size and the average lot will consist of 10,171 square feet.
4. Phases 4 & 5 are in the vicinity of other similar developments including Phases 1-3 of Pelican Point, Independence, and Stonewater Creek.
5. Based upon the record and with the conditions of approval this subdivision will not have an adverse impact on the neighboring properties or area roadways.
6. Consistent with the original subdivision plan, Phases 4 and 5 will use the community's entrance on Cannon Road (S.C.R. 307). DelDOT determined that a Traffic Impact Study was not needed for this resubdivision application but DelDOT will require that the Cannon Road entrance meets current DelDOT standards for the additional lots created as part of this resubdivision.
7. As a part of final site plan approval, stormwater management design and permitting will be required through the Sussex Conservation District and DNREC; thus assuring Pelican Point and neighboring lands will have adequate storm water protection.
8. This application is a portion of the previously approved Pelican Point subdivision and will be subject to the covenants, conditions, and restrictions for the existing Pelican Point community.
9. The amenities for the Pelican Point community, including a pool, clubhouse, outdoor lounge, child play area, and multi-use courts are constructed and have been used for approximately 2 years.
10. Phases 4 & 5, as proposed, meet the purpose and standards of the Subdivision Code and the Applicant has addressed the requirements of Section 99-9C of the Code.
11. Phases 4 & 5 have a design that is superior to a standard subdivision. The design exceeds the open space requirements, with approximately 44.216 acres of interconnected open space provided.
12. The project will be served by central water and sewer systems.
13. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision. This is the same designation it had in the prior Comprehensive Plan when Phases 4 & 5 were initially approved.
14. This preliminary approval is subject to the following:
 - a. There shall be no more than 219 lots within Pelican Point Phases 4 & 5.
 - b. The development shall be served with water and sewer by Artesian Resources providing a central sewer system and a central water system for drinking water and fire protection, as required by applicable regulations.
 - c. The applicant, its successors and/or assigns, shall submit Phases 4 & 5 to the existing restrictive covenants for Pelican Point so that these lots are part of the existing Pelican Point Property Owners Association, Inc., which shall be responsible for the maintenance of streets, buffers, stormwater management facilities and other common areas.

- d. The stormwater management system and erosion and sediment control facilities shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- e. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- f. There shall be a fenced in dog park for use by members of the Pelican Point subdivision and parking shall be provided adjacent to the dog park.
- g. There shall be a 20 foot buffer installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation as much as possible with limited disturbance.
- h. The development shall comply with all DelDOT entrance, intersection, roadway, and multi-modal improvement requirements.
- i. The Applicant shall use its best efforts to obtain a construction entrance for Phases 4 & 5 so that construction vehicles do not have to use the existing roads in the Pelican Point subdivision.
- j. Street design shall meet or exceed Sussex County standards.
- k. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- l. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Saturday.
- m. The Applicant shall coordinate with the local school district regarding the location of a school bus stop. The location and details of this area shall be shown on the Final Site Plan.
- n. Phase 4 & 5 shall be served by the amenities for Pelican Point.
- o. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- p. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and the sidewalk system shall connect with the sidewalk system in Pelican Point Phases 1-3.
- q. The Final Site Plan and the recorded Restrictive Covenants for this development shall include the Agricultural Use Protection Notice.
- r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- s. The Preliminary Site Plan and Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/U 2258 Bioenergy Development Group, LLC

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

The Commission discussed this application which has been deferred since February 11, 2021.

Mr. Mears was absent on February 11, 2021. He stated that he had viewed the tape of the public hearing and was prepared to vote.

Ms. Wingate moved that the Commission recommend approval of C/U 2258 for **Bioenergy Development Group, LLC** for a Conditional Use to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation based upon the record made during the public hearing and for the following reasons:

1. The property is a large parcel consisting of approximately 228.88 acres more or less and is located in the AR-1 Agricultural Residential District, which allows for a full range of agricultural activities, and is designated in the County's Comprehensive Land Use Plan as an Industrial Area, allowing land to be devoted to concentrations of larger industrial uses including heavier industrial, light industry, warehousing, and flex space.
2. The site was originally approved in 1999 for a conditional use and has been in operation since then for the receipt of poultry waste to be converted to fertilizers. The site is currently operated by the Applicant as a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry waste and litter. These historic uses have been approved by regulatory agencies, including DNREC air and water quality agencies.
3. The present use was originally granted by Conditional Use No. 1314 and has been amended by Conditional Use Nos. 1691 and 1962. These conditions, as amended, will continue to apply to the site.
4. This proposed extension to the existing conditional use enlarges the use to include nutrient recovery and conversion for natural gas and electrical generation. As part of this expansion, the Applicant intends to construct a facility with tanks and anaerobic digesters which will recycle poultry byproducts and create renewable natural gas. The Applicant intends to use dissolved air flotation sludge ("DAF") which is derived from the poultry industry in this process. Microorganisms within contained tanks will be used to extract energy from poultry residuals. The other structures currently existing on the site will remain.
5. The proposed change is consistent with and is a reasonable expansion of the current use and is essential and desirable for the general convenience and welfare of Sussex County residents and the agribusiness community.
6. The proposed use will require regulatory review by State agencies, including DNREC, relating to air and water quality controls, the State Fire Marshal, and DelDOT. New approvals for the proposed use will be required.
7. The granting of this application benefits the environment by providing a clean and efficient method for the conversion of poultry litter and DAF to renewable energy and by serving the community with natural gas and electricity.
8. As proposed by the Applicant, the total area of disturbance from the proposed use will be 11.22 acres, more or less, and there will be no change to the wooded cover on the property.
9. The proposed facility will be located adjacent to the existing compost facility and behind the pelletizing facility and will be designed to blend into the site.
10. The Applicant will accept poultry litter and DAF from area poultry producers and the proposed use will reduce the amount of DAF land application on area farms which would benefit area soils and waterways.

11. The anaerobic digester system proposed by the Applicant will utilize existing stormwater and the Applicant intends to recycle treated wastewater as well to minimize the need for other water sources in this process. The Applicant also aims to have a 0% discharge of surface water from the site.
12. There were concerns raised through written comments and at the public hearing about the environmental effect of the project but the Applicant will be subject to regular permitting requirements imposed by DNREC and will have to comply with DNREC's requirements.
13. The use, if in compliance with DNREC regulations, will not likely have any adverse impact upon the area or neighboring or adjacent properties.
14. The use, as amended, will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways. DeIDOT has submitted a letter that DeIDOT considers the traffic impacts from the proposed use to be diminutive.
15. The use is of a public or semi-public character that will be a benefit to Sussex County and will promote the health, safety, and welfare of the inhabitants of Sussex County.
16. This use is subject to the following conditions:
 - a. Except as otherwise amended by this grant of conditional use, the conditions imposed by Conditional Use No. 1314 as amended by Conditional Use Nos. 1691 and 1962 shall remain in effect.
 - b. The proposed facility shall be subject to DNREC and other state and federal regulatory approvals.
 - c. The proposed facility shall only accept, process, and handle poultry litter and DAF.
 - d. There shall not be any stockpiling of DAF, poultry litter, or wastewater on site.
 - e. This conditional use shall be valid concurrent with DNREC's permits for this use. If the DNREC permits shall be terminated or expire, this conditional use shall also terminate and expire.
 - f. The proposed facility, anaerobic digesters, pretanks, and other equipment and structures related to this use shall be located behind the site of the existing pelletizing facility and the area of disturbance related to this new use shall be no greater than 11.3 acres.
 - g. As proposed by the Applicant, there will be no change to the wooded coverage on the property.
 - h. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
 - i. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to operate the proposed facility.
 - j. As proffered by the Applicant, a landscape buffer shall be installed at the front of the site. A landscape buffer plan shall be included as part of the Final Site Plan for the project.
 - k. The failure to abide by these conditions shall result in the termination of the conditional use approval.
 - l. The Applicant shall submit a Final Site Plan, which 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 of C/U 2258 Bioenergy Development Group, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

OTHER BUSINESS

Sycamore Chase (2018-24) (F.K.A. Good Will Farm & Willow Run)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of a cluster subdivision to consist of one-hundred and four (104) single-family lots, private roads, open space and associated site amenities. The property is located south of Ocean View on Bayard Road (S.C.R. 384) at the intersection of Peppers Corner Road (S.C.R. 365) and Central Avenue (S.C.R. 84). At their meeting of Thursday, February 14, 2019, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the development. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 134-18.00-55.00 & 134-19.00-5.00 & 6.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate, and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

S-21-02 Stephen's Rentals, LLC

Final Site Plan

This is a Final Site Plan for a proposed Telecommunications Tower and equipment. The property exists on the south side of Old Racetrack Rd. (S.C.R. 502). The Telecommunications Tower was approved by the Sussex County Board of Adjustment on September 21, 2020 through Special Use Exception Case No. 12472. Staff notes this site plan is eligible for both preliminary and final site plan approval. The site plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 532-20.00-14.02. Zoning District: HI-1 (Heavy Industrial District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to approve the Final Site Plan. Motion carried 4-0.

S-20-11 Lands of H&S Properties, LLC

Revised Preliminary Site Plan

This Revised Preliminary Site Plan proposes a professional office to be located within an existing 485 square foot dwelling. The property exists on the northwest corner of Beaver Dam Road (Route 23) and Church Street (S.C.R. 285B) at 17662 Beaver Dam Road. This site plan is associated with Conditional Use No. 2190 that was approved by the Sussex County Council on January 7, 2020 and adopted through Ordinance No. 2699. This Site Plan was last heard by the Sussex County Planning and Zoning Commission on September 24, 2020. At this meeting the Commission voted to take no action as it was determined the Conditions of Approval needed to be interpreted by the County Council. While this site plan has no preliminary approval, staff are in receipt of all agency approvals, so it is noted that this plan is eligible for both preliminary and final approval. The site plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-5.00-212.00. Zoning District: AR-1 (Agricultural Residential District).

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

Mountaire Farms – Millsboro Facility

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for a Wastewater Treatment System Upgrade at the existing Mountaire Farms – Millsboro Facility located off of John J. Williams Hwy. (Route 24). The proposed upgrades will be three (3) new equalization (EQ) tanks, each will replace a current tank or lagoon, a proposed pretreatment building, which will move the existing pretreatment system closer to the wastewater treatment plant, two (2) new treatment tanks for nitrogen removal, an additional finished storage pond, and new sludge dewatering equipment and building. There will be no increase in capacity to the wastewater facility and the permitted flow limit from DNREC is not changing. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-32.00-117.00. Zoning District: HI-1 (Heavy Industrial District). Staff are awaiting agency approvals.

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

Yogi Bear’s Jellystone Park Camp

Revised Amenities Plan

This Revised Amenities Plan proposes an addition of an aqua park and bath houses to be located within the Yogi Bear’s Jellystone Park Camp. The property is located on the east side of Brick Granary Road (S.C.R 216A). Conditional Use No. 1510 was approved by County Council on April 6th, 2004 for a campground under Ordinance No. 1681. The Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 230-7.00-47.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Revised Amenities Plan as final. Motion carried 4-0.

Lands of Floyd D. Higel

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off a proposed 50-foot wide access easement, residual lands and an easement ROW lot. Lot 1 shall measure 0.756 acre +/- and the residual lands shall measure 2.297 acres +/- . The property is located on the southwest side of Armory Rd. (Route 20) and it does not exist within any County Transportation Improvement District. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. 911 Address: 31048 Armory Rd., Frankford. Tax Parcel: 433-7.00-10.00. Zoning District: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

Lands of Trinity Commercial Holdings, LLC

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off a proposed 50-foot wide access easement. Parcel A shall measure 9.01 acres +/- and Parcel B shall measure 8.47 acres +/- . The property is located on the southeast corner of Fleatown Rd. (S.C.R. 224) and N. Old State Road (S.C.R 213). The property does not exist within any County Transportation Improvement District. The Minor Subdivision

Plan complies with the Sussex County Zoning and Subdivision Codes. 911 Address: 11671 Windmill Lane, Lincoln. Tax Parcel: 230-19.00-111.00. Zoning District: HI-1 (Heavy Industrial District) & GR (General Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to approve the Minor Subdivision off a 50' easement. Motion carried 4-0.

PUBLIC HEARINGS

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

C/U 2251 – Heimlich Solar Partners, LLC

An Ordinance to grant a Conditional Use of land in a GR General Residential District and an AR-1 Agricultural Residential District for a 35.4 acre solar field to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 142.80 acres, more or less. The property is lying on the east side of Mile Stretch Rd. (S.C.R 590) approximately 0.49 mile southeast of Scotts Store Rd. (Route 36). 911 Address: N/A. Tax Parcel: 530-13.00-10.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit book, which includes a copy of the Applicant's conceptual site plan, a copy of the DelDOT service level evaluation response, a copy of the Staff Analysis, a copy of comments from the Sussex County Engineering Department Utility Planning Division and one mail return.

The Commission found that Mr. Jeff Machiran, EDF Renewables was present on behalf of the Applicant, Heimlich Solar Partners, LLC; that also present are Doug Carton, Mark Nielson and Chad Kayser.

Mr. Nielson stated that he is the senior vice-president for Delaware Electric Cooperative (DEC) ; that DEC was formed in 1936 and is a not-for-profit organization owned by the members it serves; that it serves many of the rural areas of Sussex County; that DEC serves over 100,000 accounts and is growing at about 3% per year; that DEC is headquartered in Greenwood, Delaware and the proposed project is approximately one mile from the headquarters; that EDF Renewables is developing Heimlich Solar in partnership with Old Dominion Electric Cooperative (ODEC); and that this project is attempting to meet the standards set by the Delaware Legislature which is to have 40% renewable energy and 10% by solar by the year 2035.

Chairman Wheatley joined the meeting at 3:45 p.m.

Mr. Machiran stated that solar panels are made up of silicon or similar semi-conductor material similar to a computer chip; that when the sunlight hits the semi-conductor material it creates an electrical charge; that the current is converted into alternating current so that it can be fed into the distribution grid for use by homes and businesses; that Solar provides clean, renewable electricity without using water, creating emissions or producing waste; that its low visual profile and quiet operations make for a great neighbor; that it places little to no demand on County infrastructure; that due to the installation of the panels on steel posts, the land is easily returned to agricultural use at the end of the project's life; that Distributed Solar generates electricity in communities where power is consumed; that it connects to existing infrastructure and does not require construction of a new substation; that it increases resiliency of the local distribution grid; that it can deliver power at a lower cost to the end user; that a smaller footprint

means smaller impact; that Heimlich Solar will occupy tens of acres as compared to transmission level generation which can occupy 100's or 1000's acres; that Heimlich Solar Partners, LLC which is a wholly owned entity of EDF Renewables Distributed Solutions is the Applicant for this project; that the proposed location is one parcel of land which runs along Mile Stretch Road in Greenwood, Delaware; that the project area is currently an open agricultural field with no structures; that the anticipated project footprint will be less than 40 acres; that the capacity of the proposed project is 4.5 MWac which is a relatively small project sized accordingly to meet the needs of the customers nearby the project; that the site will be composed of racking systems installed on support posts, panels installed on the racking, a transformer skid, interconnection equipment, and a weather station; that there will be a 100-ft buffer to onsite wetland areas; that no other impact to natural resources is anticipated; that equipment will be less than 15 ft. except for the weather station; that there is a proposed gravel access drive off Mile Stretch Road; that no substation will be constructed; that the project will tie into the existing substation approximately 1.5 miles from this site; that fencing will be agricultural fencing and be consistent with the surrounding area; that concrete surfaces will be installed for the ancillary equipment and is only a very small area of the site; that wetlands have been mapped and avoided and given appropriate buffers; that there are no threatened or endangered species on-site; no cultural or historic resources have been identified on site; that stormwater runoff will be controlled in accordance with state and local regulations; that rain passes through gaps between panels to infiltrate into ground; that there is less than 1 acres of impervious surface proposed; that natural drainage patterns will be maintained as there is limited grading proposed; that the project will obtain all required local, state, and federal permits; that construction should take approximately five months and the site should be operational by 2022; and that EDF Renewable has 35 years in the U.S. developing Wind, Solar and Energy storage and is one of the largest owners of renewable energy in the country.

Mr. Hopkins asked how many kilowatts does the average home use.

Mr. Machiran stated that this project could accommodate 800 homes.

Mr. Hopkins asked what happens to the electricity if it is not used, is it a use it or lose it situation.

Mr. Machiran stated that if not stored it would be lost, but this will be fed into the existing electrical panel and therefore, will be used.

Mr. Hopkins asked what the lifespan of this project is.

Mr. Machiran responded that it is 20 – 25 years lifecycle, that when the lifecycle is done, the panels will be removed, and the materials be recycled for parts and the land can be returned to agricultural use.

Ms. Stevenson asked if there will be any noise associated with the project.

Mr. Machiran responded that if you are up close the noise would be like the hum of a refrigerator.

Ms. Stevenson asked what are the guarantees that this would be dismantled when no longer functional.

Mr. Machiran stated that it would be a financial benefit for their company to salvage the material and recycle it.

Ms. Wingate asked about the type of fencing that will be used.

Mr. Machiran stated that it is a typical agricultural fence of wooden posts with wires.

Mr. Mears asked how many vehicles per day would visit the site.

Mr. Machiran responded that once the site is up and running that someone would visit the site monthly for grass cutting and site maintenance.

Mr. Mears asked what the purpose of the weather station is.

Mr. Carton stated a wind speed sensor is required for this project, this will collect the ambient air temperature, the operating cell temperature in addition to wind speed; that this will be transmitted to the data center so they can monitor production in relation to weather conditions; and that this will indicate any problems at the project.

Mr. Whitehouse asked if the panels would face in a particular direction.

Mr. Machiran stated that the panels will be on single access trackers and will follow the direction of the sun throughout the day.

Chair Wheatley asked for more clarification on the proposed fencing and height of the fencing.

Mr. Carton stated that the fence is also known as a welded wire or square knot fence and will be 6 ft. tall.

Chair Wheatley asked if there would be security lighting at the site.

Mr. Machiran responded that there will be no lighting on site.

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

Prior to the recess, the Commission discussed Application C/U 2251 – Heimlich Solar Partners, LLC. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Recess 4:10 P.M. – 5:30 P.M.

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

C/U 2208 – Artesian Wastewater Management, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District to allow for an expansion of and amend conditions of approval for Conditional Use No. 1724 to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 127.37 acres, more or less. Conditional Use No. 1724 (Ordinance No. 1922) for a Sewage Treatment Plant was approved on July 31, 2007. The property is lying on the east side of Isaacs Road, approximately 610 feet south of Reynolds Road and on the southwest side of Reynolds Road, approximately 635 feet east of Isaacs Road. 911 Address: N/A. Tax Parcels: 235-6.00-28.00 and 28.09.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the previously approved ordinance referred to, a copy of the DelDOT service level evaluation response, a copy of the Staff Analysis, and one letter in opposition to the Application, fourteen letters in support and zero mail returns.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Artesian Wastewater Management, Inc., that also present are David Spacht, President of Artesian Wastewater Management, Inc., Mr. Rodney Wyatt, Vice-President of Artesian Wastewater Management, Inc., Mr. Daniel Konstanski, Principal Engineer with Artesian, also certified in Environmental Engineering, Mr. Bruce Bagley, Soil Scientist, Mr. Peter Demicco, Hydrogeologist with Demicco and Associates, LLC and Lee Bridgman, Landscape Architect working with Solutions Firm; that this Application deals with the processing of wastewater; that there are three primary providers of sanitary sewer service in Sussex County – Sussex County, Tidewater or the Applicant, Artesian; that this Application is for what Artesian refers to Southern Regional Recharge Facility (SRRF); that the collection, storage, treatment and disposal of wastewater is one of the basic elements of practically every land use application that comes before the Commission; that the use of individual septic systems is not the preferred manner to treat wastewater in today's society but instead should occur at a regional provider such as SRRF; that many people come to Sussex County because of the resources such as the Inland Bays and tributaries and most local to this site is the Broadkill River and its watershed; that referring to Tab 14 the SRRF proposed facility is at the upper left hand corner of the map and shows all of the communities that would be serviced by this proposal; that the region that will be treated by SRRF is an expansive area; that there are three existing conditional uses for this project; that the first was C/U No. 1724 (Ordinance 1922) that was for a sewage treatment plant for 74.61 acres for the collection, treatment and disposal of waste; that in 2017 there was a final site plan which is included in the exhibit book; that when C/U No. 1724 was approved by the County, C/U No. 1725 was also approved; that C/U No. 1725 was approved for various properties approximately 1,740 acres of woodlands and agricultural lands as spray areas for treated effluent; that about one year later C/U 1810 was approved for a water-treatment plan on the 74 acres which was part of the original application; that in 2018, Artesian acquired 52.76 acres adjacent to the 74.61 acres; that tonight's Application seeks to add the additional 52.76 acres to the existing 74.61 acres and to also make some amendments to the conditions on the original C/U No. 1724 which was approved; that the site lies along Isaacs Road (Rt. 30) with additional frontage on Reynold's Pond Road (S.C.R. 231); that the lagoon is located on the original 74.61 acres and the new area is on the left side of the site plan; that the lot line between the two parcels has been removed and these have now been recorded as one property totally approximately 127 acres; that removing the lot line does not extend the conditional use to the additional acreage and therefore this Application is before the Commission; that this property is located in the AR-1 zoning district and it is in the Low-Density Area on the 2045 Future Land Use Map; that there are many areas surrounding this site are in the agriculture and woodland preservation and many of these represent many of the spray fields and are used as part of the SRRF facility; that the additional 52 acres is zoned X on the FEMA maps and is outside of the 500-year flood plain; that the response from DelDOT to the Service Level Evaluation Request stated that no Traffic Impact Study (TIS) was required; that response also stated under the terms of DelDOT's Memorandum of Agreement (MOA) with Sussex County the traffic impact is defined as negligible; that there is a 90-million gallon storage lagoon on this site that cannot be seen from the road as grass covered berms form a barrier to the lagoon; that the Applicant's goal is to be treating wastewater on this site by the summer of 2022; that all the existing improvements on the site were pursuant to the approval of the original conditional use; that in addition to adding the additional acreage to the site, the Applicant is requesting some modifications to the original conditions; that the Applicant is requesting a reduction in the 30-ft buffer as it is impractical and over-dense; that in the rear of this property are spray fields, that it is impractical to have a buffer between this site and the spray fields as it would interrupt the process; that the Applicant

is proposing a 20-ft wide medium density landscaped area between Isaac's Road and the lagoon area; that as you travel north on Rt. 30 that there be no buffer as this will be a future disposal area and will look like a farm field and therefore, no benefit to planting trees to block the view of a farm field; that there are existing houses on Reynolds Pond Road which form the northern boundary of this property; that the Applicant is proposing the same 20-ft wide buffer in this area; that as you get to the western boundary, there are buildings in close proximity to each other and the Applicant has discussed with the adjacent property owner and is requesting no buffer in this area; that Condition 7 is related to the placement of equipment indoors for the reduction of the noise from generators and other equipment; that the loudest sounds generated by this site would be that of a generator starting up; that the location of the generators are such that if you are 1,000 ft. away from them, the decibel's are less than normal conversation and the generators are more than 1,000 ft. away from the property lines and adjacent residences; that this use is heavily regulated by other agencies particularly by DNREC; that there was a preliminary soils report performed on the 52 acres to establish what the disposal could be for this property; that there was a hydrogeologic suitability report which is part of the DNREC approval process; that the following is the summary of the requested changes to the conditions of approval for C/U No. 1724:

- Adds 52.76± acres for a total acreage of 127.37± acres
- Condition 1: included the terms "storage" and "treatment" to better describe the entire process.
- Condition 1: Added the information about C/U 1810.
- Condition 3: Modified the term "treatment plant building" to include "any buildings".
- Condition 4: Removed the SC Engineering Department as this is regulated by DNREC.
- Condition 5: Clarified the location and density of the buffer with the landscaping plan.
- Condition 5: Made the second sentence a separate condition.
- Condition 7: Modified so that any motorized, non-vehicular equipment building within 600' of a dwelling shall be located indoors;

that all the other conditions would remain the same as the original conditions; that this use on this site will be closely monitored by DNREC; that the Application before the Commission is the appropriateness of the expansion of the conditional use and the changes to some of the conditions; that Sussex County Code section 115-171 describes the purpose of the conditional use "is to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the county, require the exercise of planning judgment on location and site plan".; that at the beginning of the presentation, a slide was shown outlining the area that this recharge facility will serve and that best demonstrates how this is necessary for the people of Sussex County; that this plan will keep similar uses in the area where the infrastructure is already in place; that in the Utility Chapter, Goal 7.1 of the Sussex County Comprehensive Plan states "encourage adequate central sanitary sewer service in a coordinated approach that anticipates future demand." and one of the objectives under that goal is to "optimize existing sewer transmission and treatment infrastructure utilization, limiting if possible duplicate infrastructure installation."; and that is what is proposed this evening is to service an existing regional location for wastewater treatment and this application demonstrates a coordinated approach to optimize the existing conditional use and limit duplication of systems here or in other parts of the County which does not have the existing infrastructure.

Ms. Stevenson addressed a citizen's concern about an increase truck traffic.

Mr. Hutt stated that DelDOT stated that the increase in traffic would be negligible and that this site is located on a truck route.

Mr. Rodney Wyatt stated that there will be the same amount of traffic as under the original conditional use; that there may be an additional pumper truck once a week to handle the sludge operation.

Mr. Hopkins stated that this plan was put in place approximately twenty years ago and it showed good forethought as waste must be sent somewhere to be treated and this is a good location.

Ms. Wingate asked is there would be odors associated with the increase of operations.

Mr. Daniel Konstanski stated the most odor associated with the site would be where the headworks is located, that will be a fully enclosed building with a HVAC system to deal with the odors; that once it goes out to the treatment plant there are aerators and other equipment to break down the waste will help with the odors; that there will be odors associated with the plant but there are systems in place to help mitigate.

Mr. Mears asked what the level of purification of the water going through the sprayers.

Mr. Konstanski stated that per DNREC regulations, that this would be unlimited public access meaning that no fencing or buffers are required to keep people from walking onto the site; that if someone were to come in contact with the treated water, it would not be a problem.

Mr. Mears asked what happens to the spray field when it is flooded, can't percolate or it frozen.

Mr. Konstanski stated that when they are unable to use the spray field, there is a 90-million-gallon lagoon on site to store the water for over one month.

The Commission found that there was no one spoke in favor of the Application.

The Commission found that Mr. Wayne Hudson spoke neither in favor of nor in opposition of the Application. Mr. Hudson stated that he would like to see how the Applicant will operate under the terms of the first conditional use before expanding that use and that he was unaware that a sewage treatment plant could be permitted in AR-1 zoning.

Mr. Hudson stated that Artesian would like to be fully operational, however, there is a permit process with DNREC that the Applicant is working on to have the site up and running.

Mr. Konstanski stated that there is an immediate use for the additional property, that there will be an influent lagoon on the new acreage which will give the Applicant the ability to hold the waste when it first comes in; that it will allow the Applicant to equalize the flow so that no matter when or how the waste comes in, the plant can be fed uniformly; that it will give the ability to hold water if something should be amiss at the plant; that some will be for future development but having the conditional use at this time allows for good planning.

The Commission found that Ms. Stephanie Coulbourne spoke in opposition of the Application. Ms. Coulbourne stated that she lives on Reynolds Pond Road which is contiguous to this site; that she has questions about the service area for the project and does it justify the need of the expansion before this project begins; that she is aware that there are violations from Allen Harim and that she hopes that

Artesian will not accept it if it is not in compliance; that Ordinance No. 1922 that Sussex County adopted in 2007 found that the Conditional Use was appropriate legislative action with the following facts and one of those facts was that the regional treatment plant would not have an adverse effect on the County area residents; that this does affect her; that the drainage will run in a northern direction and will go towards her backyard; that her well is not shown on the map; that the soil samples were taken during the summer months; that the letter from the senior hydrologist from February 2021 stated that the Hydrogeological Suitable Report (HSR) had not been conducted to date; that the quality of the effluent discharged to the site is not known; that there are seven different reports that have not been completed yet; that if these reports have not been completed why is this Conditional Use being considered; that even though this falls under DNREC purview, she would like to have seen it done so she knows how the water supply will be affected; that she does not support the proposed future disposal site; that there is no nutrient management study; that the HSR investigations have not been completed; that no report regarding the groundwater recharge area has been done; that 1700 acres for spray fields is sufficient and they don't need to spray up to her property line; that she has concerns that they will spray on frozen ground if there is an emergency situation; that she understands that this service is needed but would like to see that it complies with all regulations; that it will not affect her health or that of her family; that there is no justification for a reduction in the landscaped buffer except on the western side next to the spray fields; that she would like the forested buffer behind her home to remain; that she has concerns about the maintenance of the forested buffer and that it won't affect the trees on her property; that she requests that the Commission not reduce all the conditions set forth in ordinance 1922; that she requests that the Commission consider increasing the buffer adjacent to the residential properties; that a condition be placed for lifetime maintenance of the landscaped buffers; and that the Commission consider placing a performance bond so the Applicant complies with all the conditions.

Mr. Mears asked how oversaturation is monitored to prevent run-off.

Mr. Konstanski stated that there are flow meters which monitor what is going out to each of the spray fields and for standing water or frozen ground that staff members monitor this visually to check the conditions before spraying commences.

Mr. Mears asked about placing a berm to prevent any run-off.

Mr. Konstanski stated that the rate that it is put down is rated to match what the soil can absorb so it all goes on the crops in the spray area; that they do not anticipate any runoff; and that if that should happen it would be a problem they would have to fix.

Mr. Hutt addressed the question that Ms. Coulbourne asked about the service area and stated that Mr. Konstanski would respond.

Mr. Konstanski showed the map with all the areas that Artesian has committed to serve and that they had completed estimates on the anticipated density and that is how they have come up with the need for this type of regional facility.

The Commission found that Mr. David Spacht spoke on behalf of the Application. Mr. Spacht stated that his company operated in the unincorporated areas of Sussex County; that this is the area that Sussex County wastewater does not serve; that they work closely with Sussex County and have several interconnections with the County to service the area; that this will help the County serve the Airport Facility in addition to others; that the Sussex County Utility Commission has worked with Artesian on this plan; and that the Artesian system connects to the County System and it becomes one large system

for the greater good of the entire area.

The Commission found that Mr. Keith Steck spoke in opposition of the Application. Mr. Steck stated that he is opposed to the project as it is not well thought out; that is not the right project that they talked about; that the information provided as part of this Application is incomplete; that the well head protection areas need to be protected in addition to the surrounding areas; that the excellent ground water recharge areas are areas that have excellent soil, gravel, sand, etc. so the water can percolate down through the ground and get into the ground water which is our drinking supply; that everyone in the state gets their water from a well; that it is critical that we protect this; that the County has an ordinance called the Source Water Protection Ordinance but there is nothing in the documents that references this; that compliance from the County is not included with Artesian's documents and there is not indication that they have completed this; that this is critical to protect drinking supplies; that the Ordinance states "All subdivision and land development plans depicting development or land disturbance (excluding agricultural tillage) submitted for County review shall be evaluated for the existence of wellhead protection areas and excellent groundwater recharge areas by scaling for distances shown on the Sussex County Water Resource Protection Maps" that this has not been shown on the drawings and maps submitted by the Applicant; that through Google this information can be found and shown on First Map and all of the new area being discussed tonight is over an excellent ground water recharge area; that it looks like it extends into the area where the 90-million-gallon lagoon will be placed; that this information needs to be provided before Commission makes a decision and that a PLUS review should be completed to address these issues.

Chairman Wheatley asked that the Applicant address Mr. Steck's concerns about the excellent groundwater recharge areas and to address how the 90-million-gallon lagoon was calculated.

Mr. Hutt stated that Mr. Steck had many detailed questions which would be answered in the over 1000-page application to DNREC which are not included in this Application as this is for land use but DNREC will monitor all the necessary regulations associated with the treatment facility.

Chairman Wheatley stated that the purpose of this hearing is not to vet the design of the plan but to determine the land use aspect.

Mr. Konstanski stated that DNREC requires Artesian to look at the well head protection areas and ground water recharge areas extensively; that the 90-million-gallon lagoon was arrived at by looking at what is needed for the crops with both nutrients and water volume; that the Applicant worked with vegetative management experts and took into account historical rainfall and what is expected from existing customers and future customers and took the worst case scenario and that in the simple form is how the size of the lagoon was calculated; and that the retention pond could hold water without irrigating for 30 days.

The Commission found that Mr. John Rebar, DNREC, was present by teleconference to answer any questions; that there were no questions from Commission members.

The Commission found that Mr. Harry Isaacs spoke in support of the Applicant. Mr. Isaacs stated that this land is in a land preservation area; that is why it was chosen by Artesian as it cannot be sold for development; that he has tilled these lands for 65 years and has never seen water run down towards the existing residences; that he is a farmer where these waters will be sprayed; that he is required by DNREC to only spray 1.65 inches per week; and that is 3 times per week and if additional water is needed during

the summer months, it would not be from Artesian but from a ground well.

The Commission found that Ms. Shelly Cohen spoke by teleconference in opposition to the Application. Ms. Cohen stated that she understood that this area would be for development and was not designated as a sewer district for the County; that all of this sewage and wastewater does not originate in the Milton or unincorporated Milton area; that every time there is a hearing like this it turns out that the operation is bigger and different than what was stated for; that Allen Harim has 1.5 million gallons of chicken processing wastewater per day that is supposed to be pretreated to go to this Artesian facility; that Allen Harim is now increasing its water application; that the Applicant has an agreement with Georgetown airport to take on an additional 150,000 gallons of sewage per day and other developments that are not in the Milton area; and that the numbers don't add up.

Ms. Stevenson asked if the Applicant would have a problem increasing the buffer behind Ms. Coulbourne's property.

Mr. Hutt stated that this was not a reduction from what was originally there, as there was no buffer between this property and the residences on the northern portion of the property; that the Applicant is offering a 20-ft buffer but would consider increasing it to 30 ft.

Mr. Hopkins asked if the buffer serves a meaningful purpose other than something decorative.

Mr. Hutt stated that Mr. Hopkins is correct; that the buffer is a visual breakup of the different properties and provides screening.

Ms. Stevenson asked about the tree maintenance and the fact that 2 years was mentioned in the application.

Ms. Lee Bridgman stated that the 2-year period is a warranty from the landscape installer; that should any tree dies within two years of planting it will be replaced; that it is up to the property owner to maintain the trees in a healthy condition as they will have to replace them if they do not; and that the buffer is a mix of evergreen and deciduous and they will be planted approximately 25 ft. apart.

Chairman Wheatley asked Mr. Whitehouse if the Planning and Zoning office can enforce the integrity of the buffer.

Mr. Whitehouse said that is standard practice to require a maintenance period as part of the landscape plan to ensure that a buffer reaches maturity and that is normally about two years; and that if they are managed, they serve very well into the future.

Mr. Mears asked if pines and indigenous trees would thrive in this environment and would not require much maintenance.

Ms. Bridgman stated that they use trees that are already growing successfully in the area.

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

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

Chairman Wheatley stated that when the Commission considers a Conditional Use application and if they decide to recommend it for approval they can place stipulations on the approval and that is when they can take into account some of the concerns of the people who spoke about the Application.

In relation to Application C/U 2208 Artesian Wastewater Management, Inc., motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:18 p.m.

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