

THE MINUTES OF THE REGULAR MEETING OF MARCH 23, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, March 23, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, and Mr. Bruce Mears. Mr. Keller Hopkins and Ms. Holly Wingate were absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Elliott Young – Planner I, Mx. Jesse Lindenberg – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that staff had requested the public hearing for the ORD. 23-01 for the Sewer Tier Amendment to be moved to the first public hearing, as it would allow for Mr. Hans Medlarz, Sussex County Engineer to participate in the public hearing.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Agenda as amended. Motion carried 3-0.

Motion by Ms. Stevenson, seconded by Mr. Mears to approve the Minutes of the February 23, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 3-0.

PUBLIC COMMENT

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

ADDITIONAL BUSINESS

The Commission was provided a presentation by Mr. Jamie Whitehouse and Mr. Vince Robertson relating to potential 2023 County Council initiatives and developing design ideas.

Mr. Whitehouse advised the Commission that Mr. Todd Lawson, Mr. Robertson and himself presented a presentation to County Council, on March 7th, 2023, on various development design ideas to be considered; that the development design ideas could be roughly put into five broad categories being, open space, superior design, subdivision standards, forest preservation and site work; that the open space definition currently within §115-4 states that open space must be predominantly undeveloped or in the natural state; that the conversation before County Council related to what is and what is not allowed within areas of open spaces; that consideration is specifically being given to amenities, which include buildings, paving and swimming pools; that the initiative is proposing discussion on what should be included as open space, and if refinement of the definition could yield some benefit; Mr. Whitehouse advised the Commission that the next section was for superior design; that a series of ideas were being considered to allow additional options and flexibility to yield better designs; that consideration is being given to requesting the applicant to show what would be allowed under the Standard Subdivision design, and then compare the Cluster Subdivision to the standard, showing the reasons the subdivision is superior; that consideration could be given to reviewing primitive buffers sizes, including potential additional protections for buffers; that the idea of a rolling berm and solid fencing are options; that forested buffers with specified depths and minimum lot sizes within cluster

subdivisions are being considered; that these are topics of conversation; that the aim is for the Commission to begin giving the topics some thought; that the next section was related to forest preservation; that the Commission may consider additional incentives and options which allow flexibility and better design to encourage for forest preservation; that potentially requiring a forest assessment prior to site work; that applicant's are required to show how much forest there is on a site; that a forest assessment is a more qualitative and quantitative tool; that this would allow for the Commission to better understand the quality of existing forests on sites; that this idea links back to developing protections to existing wooded areas; that the Commission could consider mechanisms to be placed which would ensure wooded areas are not interfered with during construction; that consideration should be given on how to incentivize the retention of existing mature forests; that these ideas were presented for County Council to consider; that they gathered feedback to make the presentation to the Commission on the overall topics being considered and the next step will be the joint workshop with County Council.

Mr. Robertson stated the current presentation was to assist in helping the Commission begin thinking about the initiatives, as a joint workshop with County Council will be held in the spring and that the presented list of initiatives was not exclusive; that there are some inconsistencies between the open space definition and the items being considered as potential open space; that consideration is being given as to whether additional things should be considered as open space, or if items should be taken off or clarified; that there are 17 items listed within §99-9C; that within §99-9C it states that the Commission *shall consider* these list of items; that he questioned what does *shall consider* mean; that consideration may want to be given to changing the word *consider* to more affirmative wording; that the Commission should look at the 17 items to see if the items should be more clear, or there may be items that are no longer applicable and there may be items that should be applicable that are not listed.

OTHER BUSINESS

(2018-34) Keastone Bay (F.K.A. (2005-72) Bridlewood at Baywood) – Section 1

Final Subdivision Plan & Landscape Plan

This is a Final Subdivision and Landscape Plan for a Coastal Area cluster subdivision to consist of six-hundred and fifty-one (651) single-family lots with private roads, open space, and proposed amenities to include a clubhouse, inground pool, children's splash pad, a playground, 4 bocce ball courts, 4 pickleball courts, and 2 tennis courts. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, January 23rd, 2020, for 651 lots. Additionally, staff would note that this Application was subject to a 6-month time extension which was granted by the Commission at their meeting of Thursday, August 12th, 2022, in which the expiration date for the Preliminary Plan approval was extended to July 23rd, 2023. The Applicant is requesting that the subdivision be approved in Phases. Section 1 consists of seventy-five (75) lots in total. A Master Phasing Plan has been submitted to the Department of Planning and Zoning depicting the overall subdivision design. The property is located on the northwest and southeast sides of Green Road (S.C.R. 298A), approximately 360 feet northeast of Banks Road (S.C.R. 298). Section 1 of the Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 234-24.00-1.00, 234-17.00-170.00, 172.00, 173.00, 174.00 & 234-18.00-68.00 & 234-24.00-2.00. Zoning: AR-1 (Agriculture Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Final Subdivision Plan and Landscape Plan as final. Motion carried 3-0.

(2021-34) Suncrest (F.K.A. Marsh Homestead)

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Suncrest (2021-34) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 12, 2023. The Applicant requests that Condition "I", which required that, "Amenities including a clubhouse, pool, and tot lot shall be constructed and open to use by the residents of this development on or before the issuance of the 30th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities," be amended to require that, "Amenities including *bocce ball courts, a pickle ball court, a pavilion, a fire pit, and walking path* shall be constructed and open to the use by the residents of this development on or before the issuance of the 30th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities." This AR-1 cluster subdivision contains thirty-six (36) single-family lots on 18.02 acres +/- and is located on the south side of Waterview Road (S.C.R. 279A) and the south side of Camp Arrowhead Road (S.C.R. 279). Tax Parcel: 234-12.00-22.31. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to grant approval of the request to amend the Conditions of Approval with the strong recommendation that consideration be given to allowing above-ground pools. Motion carried 3-0.

(2016-14) Walden (F.K.A. Burton's Pond)

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Walden (F.K.A. Burton's Pond) Subdivision, which is a cluster subdivision to consist of two-hundred and sixty-five (265) single-family lots, private roads, and open space. At their meeting of Thursday, December 20th, 2018, the Planning and Zoning Commission approved the Final Subdivision Plan for the development. Specifically, the request is to amend Condition #1, which prohibits lots from being located on the north side of Hollymount Road, Condition #14 relating to the timing, provision, and completion of amenities within the Subdivision, Condition #18(C) regarding the allowance of hunting activities on Burton's Pond, and Condition #19 pertaining to the use and access of Burton's Pond. A copy of the Applicant's request, including the proposed language for each of these Conditions, has been provided in the Commission's packet this evening. The property is located on the northwest and southwest corners of Hollymount Road and John J. Williams Highway (Route 24) in Harbeson. Tax Parcels: 234-11.00-97.00 & 234-17.00-17.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to grant approval of the request to amend Condition No. 1 of the Conditions of Approval to now read, "*Condition #1 – "There shall be no more than 265 lots within the subdivision."*" Motion carried 3-0.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to grant approval of the request to amend Condition No. 14 of the Conditions of Approval to now read, "*Prior to the issuance of the 180th building permit, the Developer shall construct all of the recreational amenities."*" Motion carried 3-0.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to deny the request to amend Condition No. 18(c) of the Conditions of Approval relating to the allowance of hunting activities on Burton's Pond. Motion carried 3-0.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to defer action for further consideration of the request to amend Condition No. 19 of the Conditions of Approval, relating to the use of and access to Burton's Pond. Motion carried 3-0.

Lands of Martin Property Development, LLC - (Frankford Business Park - Phase 2)

Preliminary Site Plan

This is a Preliminary Site Plan for Frankford Business Park - Phase 2 for the construction of three (3) office buildings. Each of the three (3) structures are proposed to contain four (4) units each hosting both office and warehouse uses. The total square footage proposed at the site includes 9,400 square feet of office space and 108,100 square feet of warehouse use with parking and other site improvements. The property is located off DuPont Boulevard (Route 113) and Delaware Avenue (S.C.R. 54A). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 433-11.00-21.00. Zoning: LI-2 (Light Industrial). Staff are awaiting agency approvals. If the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion carried by Mr. Mears, seconded by Ms. Stevenson, and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be by the staff upon the receipt of all agency approvals. Motion carried 3-0.

Lands of Camenisch Investments, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a three-bedroom, 1,350-square-foot dwelling to consist of three (3) garage bays. This dwelling will be located on the same parcel of land as an existing legally nonconforming dwelling which classifies the site as multi-family. Two parking spaces are proposed in addition to the three (3) garage bays. The dwelling is located within the Henlopen Transportation Improvement District and will be subject to a TID Agreement with the Delaware Department of Transportation (DelDOT). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-113.00. Zoning: C-1 (General Commercial). Staff are awaiting agency approvals. If the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 3-0.

Lands of Robert Plitko

Minor Subdivision off a 71-ft Easement

This is a Preliminary Minor Subdivision Plan for the subdivision of a 1.99 acre +/- parcel of land into two (2) lots including residual land off a 71-ft easement. Proposed Lot A consists of 1.00 acres +/- and the residual land consists of 0.99 acres +/- . The property is located on the northwest side of Omar Road (S.C.R. 54). The Applicant has submitted a letter requesting a waiver from any grading requirements. The Preliminary Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 134-14.00-11.00. Staff are awaiting agency approvals. If the Commission desire to act favorably on this proposal, staff are requesting final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 71-ft. easement, as a preliminary, with final approval to be by the staff upon receipt of all agency approvals and to grant approval of the waiver request from the grading requirement. Motion carried 3-0.

Lands of Brenda Hopkins-Davis

Minor Subdivision off a 40-ft Easement

This is a Preliminary Minor Subdivision Plan for the subdivision of a 7.50 acre +/- parcel of land into two (2) lots including the residual lands off a 40-ft easement. Proposed Lot 1 consists of 1.0128 acres +/- and the residual lands consist of 6.4872 acres +/- . The property is located on the south side of Adams Road (S.C.R. 583). The Applicant has submitted a letter requesting a waiver from any grading requirements. The Preliminary Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: GR (General Residential District). Tax Parcel: 530-13.00-37.06. Staff are awaiting agency approvals. If the Commission desire to act favorably on this proposal, staff are requesting final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 40-ft. easement and to grant approval of the waiver request from the grading requirements for Lot 1 only. Motion carried 3-0.

OLD BUSINESS

C/U 2355 Dan Velez and Maricryst Birao

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BUSINESS PARK CONTAINING MIXED-USE BUILDINGS FOR OFFICE AND RETAIL PURPOSES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.15 ACRES, MORE OR LESS. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.30 miles east of Hudson Road (S.C.R. 387). 911 Address: 32634 Lighthouse Road, Selbyville. Tax Map Parcel: 533-18.00-35.03.

The Commission discussed the Application which had been deferred since March 9, 2023.

In relation to C/U 2355 Dan Velez and Maricryst Birao. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0.

C/U 2420 Vance Daniels

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL AND A C-1 GENERAL COMMERCIAL DISTRICT FOR AUTO-STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRE, MORE OR LESS. The property is lying on the west side of Daniels Road (S.C.R. 215A), approximately 480 ft. south of Coastal Highway (Rt. 1). 911 Address: 9242 Daniels Road, Lincoln. Tax Map Parcel: 230-15.00-3.00.

The Commission discussed the Application which had been deferred since March 9, 2023.

In relation to C/U 2420 Vance Daniels. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 3-0.

C/U 2346 TPE DE SU114, LLC

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 LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS. The property is lying on the north side of Dorothy Road (Rt. 64) and the west side of Sussex Highway (Rt. 13). 911 Address: N/A. Tax Map Parcel: 332-7.00-19.00.

The Commission discussed the Application which had been deferred since March 9, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2346 for TPE DE SU114, LLC for a solar farm in the AR-1 District based on the record made during 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 because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 27 acres of a larger 63.86-acre tract.
3. 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. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. With the conditions imposed in this recommendation including landscaped buffers, the proposed use will not have any adverse impact on the neighborhood. In addition, there is information in the record that solar facilities do not have a negative impact upon adjacent property values.
5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, glare, dust, or odor will be generated by the facility.
7. There will be a buffer of planted vegetation along the east and south sides of this site to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly. The trees on the northern and western sides of the property will be maintained.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any 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.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - E. 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.
 - F. Any transformers or similar equipment or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.

- G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- I. There shall be a 25-foot-wide buffer of planted vegetation along the eastern and southern sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing the solar arrays to function properly. As stated by the Applicant, this planted area shall include 12 trees and 15 understory shrubs per 100 linear feet. The trees shall be at least 9 feet tall with a caliper of at least 2.5 inches at the time of planting.
- J. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2346 TPE DE SU114, LLC for the reasons and conditions stated in the motion. Motion carried 3-0.

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

C/U 2347 TPE DE SU94, LLC

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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS. The property is lying on the east side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of the intersection of Haflinger Road (S.C.R. 625). 911 Address: N/A. Tax Map Parcel: 230-12.00-39.00.

The Commission discussed the Application which had been deferred since March 9, 2023.

Ms. Stevenson moved that the Commission recommend approval of C/U 2347 TPE DE SU 94, LLC for a solar farm in the AR-1 District based on the record made during 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 because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 18 acres of a larger 39.76-acre tract.
3. 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. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.

4. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties and there are no homes in close proximity to this site. In addition, there is information in the record that solar facilities do not have a negative impact upon adjacent property values.
5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, dust, glare, or odor will be generated by the facility.
7. The site is surrounded by land that is actively farmed. As a result, no buffer is required.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
 - B. Any lighting on the facility shall only consist of perimeter lighting needed for security measures. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - C. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - 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 or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.
 - F. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2347 TPE DE SU94, LLC for the reasons and conditions stated in the motion. Motion carried 3-0.

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

PUBLIC HEARINGS

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

ORD. 23-01

AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04. The properties are lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcels: 533-11.00-23.00, 23.03 & 23.04. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance introduced by the County Council, and a copy of Exhibit A, which shows the existing two areas in relation to the Application site. Mr. Whitehouse advised the Commission that zero comments were received on behalf of the Application.

The Commission found that Mr. Hans Medlarz with Sussex County Engineering spoke on behalf of the Application. Mr. Medlarz stated that the application's circumstance is unusual, as normally Tier 4 does not touch Tier 1 locations; that the Tier system was approved by County Council; that the Sewer System is codified in Chapter 110 of the County Code; that the description of the tiers are enforceable by the Sussex County Engineering Department; that the Tier Map was adopted by the Planning Commission and County Council in the Comprehensive Plan; that this makes the Sewer Map similar to the Future Land Use Map; that Tier 1 areas are located within the Unified County Sanitary Sewer District; that within Tier 2, the County exclusively reserve the right to serve every and all parcels within the designation; that within Tier 3, the County requires a community system to be installed, which can be private or public; that within Tier 3, the County does have the right to refuse service; that within Tier 4, central sewer service and community sewer service is optional; that normally, the Engineering Department would not provide comment on Tier 4 subdivision proposals; that within Tier 5, community systems are not allowed, and only permit for individual on-site systems; that the subject Ordinance could not be brought before County Council, as it is not within the County's Tier 2 Planning Area; that they received a petition, which would be brought forward as an annexation and extension request; that the extension request would follow Title 9 of the Delaware Code, which spells out how to extend sewer districts; that with the subject Ordinance, the Sussex County Engineering Department supports the map amendment of the Sewer Tier Map of the Comprehensive Plan, which would bring the area to a Tier 2 designation; that by allowing the amendment, it will allow the proposed subdivision to proceed forward through the Commission's planning process, before the final decision could be made to bring the area into the Tier 1 Sewer district; that if they attempted to bring the area into Tier 1 right away, they would run afoul from the core role, which states that no sewer decisions are to be made before land use decisions are rendered; that the Engineering Department will not bring forward a sewer extension decision before County Council without the two-step process; that the original Tier Map lines were drawn by the Commission and County Council in the attempt to avoid these kinds of issues and the Sussex County Engineering Department supports the Sewer Tier Map amendment from Tier 4 to Tier 2.

Mr. Robertson stated that the proposal received a greater review as it was driven by engineering issues.

Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Ordinance; that also present were the Applicant, Mr. Jamie Sechler, with Davis, Bowen & Friedel, Inc., and Mr. Brad Absher, Principal of the Developer, Zion Church Ventures, LLC. Mr. Hutt stated that Chapter 4 is significant to the Planning Commission, as it defines the property's designation on the Future Land Use Map; that when looking at the four where-as clauses for the Ordinance, it states that part of the property is found within the Developing Area, with the balance of the property being located within the Coastal Area; that both of these areas are considered Growth Areas within Chapter 4 of the Comprehensive Plan; that the Ordinance states and supports the reasons why the amendment should be granted; that the Ordinance notes that within both growth areas, as stated by the Comprehensive Plan, central sewage is strongly encouraged and based on this reasoning, and the reasons previously stated by Mr. Medlarz, the Applicant would request the Commission recommend approval of the Sewer Tier Map amendment be approved.

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

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. Robertson advised the Commission that he had a motion prepared, which he read into the record per Ms. Stevenson's request.

Ms. Stevenson motioned that the Commission recommend approval of Ordinance 23-01 to amend the Sewer Tier Map of the Sussex County Comprehensive Plan from Tier 4 to Tier 2 for Tax Map Parcels 533-11.00-23.00, 23.03, and 23.04, based upon the record made during the public hearing and for the following reasons:

1. The Sussex County Engineering Department is in favor of this map amendment and provided reasons in support of it.
2. The property is currently within the Coastal Area and the Developing Area according to the Sussex County Comprehensive Plan. Both of these areas are "Growth Areas", and the Plan suggests that "central sewer is strongly encouraged" in them. This Tier Map amendment is in furtherance of the goal of the Comprehensive Plan.
3. This map amendment does not affect the future development of this property, which will require a separate public hearing in the future if and when any attempt to develop this property shall occur.
4. No parties appeared in opposition to this map amendment request.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval for ORD. 23-01 to amend the Sewer Tier Map of the Sussex County Comprehensive Plan from Tier 4 to Tier 2 for Tax Map Parcels 533-11.00-23.00, 23.03, and 23.04, for the reasons stated in the motion. Motion carried 3-0.

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

2022-08 Walden III

A Coastal Area cluster subdivision to divide 24.136 acres +/- into twenty-one (21) single-family lots, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the northeast side of the intersection of Sloan Road (S.C.R. 49) and John J Williams

Highway (Route 24). 911 Address: N/A. Tax Map Parcel: 234-17.00-29.00. Zoning District: AR-1 (Agricultural Residential) and MR (Medium-Density Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Preliminary Subdivision Plan, the Applicant's Exhibit Booklet, the property deed, the Applicant's §99-9C report, the Applicant's Environmental Assessment and Public Facility Evaluation Report, the Technical Advisory (TAC) Comments, including a letter from the Division of Public Health, a letter from the Delaware Department of Agriculture, a letter from the Sussex County Engineering Department Utility Planning Division, a letter from U.S. Fish & Wildlife, and a letter from DNREC Division of Watershed Stewardship. Mr. Whitehouse advised the Commission that one letter was received in opposition to the Application and that the letter was included in the Commission's paperless packet.

The Commission found that Mr. Jon Horner spoke on behalf of the Applicant, Burtons Pond, LLC; that also present were Mr. Jamie Sechler, P.E. with Davis, Bowen, and Friedel, Inc., and Mr. Ben Gordy on behalf of the Applicant. Mr. Horner stated the Applicant did submit an exhibit booklet, providing a brief overview and discussed the project's compliance with the AR-1 (Agricultural Residential) Cluster Ordinance requirements of Sussex County Code and the Comprehensive Plan; that the proposed project is known as Walden III, which is a proposal to divide 24.136 acres into 21 single-family lots as a Cluster Subdivision within the split zoned property, located within the AR-1 (Agricultural Residential) Zoning District and the MR (Medium-Density Residential) Zoning District; that the entire property is located within the Coastal Area, which is a Growth Area according to the Comprehensive Plan; that a portion of the site, estimated to be 11.952 acres (49.52%), will be open space subject to final site engineering and agency approvals; that the cluster development is superior in design to a standard subdivision as the project proposes significant amounts of open space and buffers to protect environmentally sensitive areas on the site; that these areas include regulated wetlands and the proposed stormwater management system, which will act as an amenity and natural companion to the natural features on the site; that the property is located in Harbeson, on the southeast side of Rt. 24; that the property is currently vacant; that the proposed use of 21 single-family homes would create a density of .87 units per acre; that the Code permits two units per acre in the AR-1 Zoning District; that the Code permits 35 units to be placed on the property; that Walden III complies with the purpose of Sussex County Code §115-19 and the Comprehensive Plan by proposing a low density, single-family residential development, which protects and buffers the wetlands and scenic views; that the property is split zoned, being partially located within AR-1 Zoning, which requires a minimum lot area of 7,500 sq. ft. and partially located within MR Zoning, which requires a minimum lot area of 10,000 sq. ft.; that the proposed minimum lot size is 11,989 sq. ft.; that the proposed maximum lot size is 50,010 sq. ft.; that the average lot size is 23,655 sq. ft.; that all proposed structures will comply with the height, area and bulk requirements of the Code for cluster subdivisions with provided central sewer; that the project is located within Investment Level 2 and Investment Level 3 according to the 2020 State Strategies Map; that the project complies with §115-25E for the AR-1 District design requirements for cluster developments for the reasons stated within the project reference materials provided by Davis, Bowen & Friedel, Inc.; that the proposed cluster development complies with the community design section of the Comprehensive Plan; that the housing type is limited to single-family detached dwellings; that forested buffer area with the minimum width of 30-ft. will be provided around the required areas of the property; that one exception to the buffer, would be along the right side of the property; that the stormwater management pond straddles the line; that this area is also owned by Burton's Pond, LLC, being a single lot, which is accessed by the road; that currently, no wooded buffer is proposed for that area; that should the Commission desire a buffer in that area, the Applicant would be agreeable to provide it; that no proposed lots have direct access to State maintained roads; that all lots will be configured outside of the regulated wetlands; that the proposed community will be served by both central water and wastewater systems; that wastewater is anticipated to be provided by Sussex County; that the water service will be provided by Tidewater; that the project

complies with §115-25F for a cluster development, which requires homes to be clustered on the environmentally suitable portions of the property and provides an environment and design which are superior to that which would be allowed under standard subdivision regulations; that the proposed lots are located within the environmentally suitable areas of the site, being away from the regulated wetlands; that the regulated wetlands are located along Burton's Prong and everything has been pulled inward from that area; that the proposed limits of disturbance and tree clearing line is located inward from the rear lot line in the interest of preserving trees; that the open space provided does meet the official definition of open space as it is contained in §115-4 of the Code; that the Applicant is proposing over 46% open space for the site; that the Code currently only requires 30% open space; that 33.35% of the open space is proposed to be contiguous; that open space within a cluster development further requires a pedestrian trail system to be accessible to residents; that a sidewalk system is proposed within the community; that stormwater will be handled on site and will meet the current State of Delaware regulations; that stormwater facilities will be maintained by the developer and eventually the Homeowners Association, who will assume ownership and control; that the system will be designed in accordance with the Sussex Conservation District's rules and consistent with best management practices; that tree removal will be limited to what is necessary to construct the project; that the site currently contains 13.051 acres of forested area; that it is anticipated that 10.747 acres (82%) of the existing forested area will remain; that efforts had been taken to only clear select trees toward the rear of the lots located along Burton's Prong, that the project preserves scenic views by limiting back-to-back lots, while preserving the scenic features and trees in those areas; that the plan provides gaps located between the lots; that the land plan preserves the natural facilities, proposing sidewalks and connections to DelDOT's proposed shared-use path and by prioritizing open space adjacent to natural areas; that the lot plan and design took into account the natural grades and existing drainage of the property; that the plan integrates the proposed subdivision into the existing terrain; that a landscape buffer will be provided, with the exception of the area previously mentioned; that there are no known sites on the property which require historic preservation; that all the lots are located outside of the wetland areas; that a portion of the site is located within the AE flood zone; that the flood line runs along the rear of the larger lots; that there will be minimum disturbance in that area; that grade changes will be limited to what is necessary in order to provide positive drainage; that the Applicant had undertaken efforts to incorporate existing topography into the design; that runoff will be directed via the closed road sections, storm drain network and stormwater management system in accordance with best management practices for stormwater treatment; that the plan accounts for safe vehicular and pedestrian movement within the site to adjacent ways, and will be designed to current DelDOT standards; that all roadways will be designed in accordance with Sussex County standards; that the community is not anticipated to have any adverse impact on schools, public buildings and community facilities; that the proposed single-family dwellings are likely to attract retirees and second-home residents; that the large amount of open space will also provide for active and passive uses by community residents; that the only access to the site is via Sloan Rd.; that the developer has invested approximately \$3.5 million in infrastructure improvements to Sloan Rd., Holly Mount Rd. and Rt. 24 in connection with the adjacent Walden and Villas at Walden developments; that the infrastructure improvements include the full realignment of Sloan Rd. to align with Holly Mount Rd., as well as the installation of the underground utility lines for the installation of the traffic signal by DelDOT, the installation of crosswalks and multimodal path; that the plan additionally includes an additional multimodal path in connection of the previously installed paths; that the project is compatible with nearby land uses; that the Applicant has townhomes and single-family homes located directly across the street at the Villas at Walden; that there are a number of other communities in the immediate vicinity, which consist of single-family homes as well; that it is their belief that the proposed plan is completely Code compliant and consistent with the Comprehensive Plan and he, as well as Mr. Sechler were happy to answer any additional questions.

Ms. Stevenson questioned when an application is required to go through the PLUS process.

Mr. Whitehouse advised the Commission that applications are required to go through the PLUS process when the proposal is for 50 units or more.

Ms. Stevenson stated U.S. Fish & Wildlife requested the site be checked for threatened species; that she questioned if the Applicant performed a study relating to potentially threatened species, if the proposed project will be part of or separate from the existing Walden developments, and how many homes are located within the developments across the street.

Mr. Jamie Sechler with DBF, Inc. stated a complete study, relating to potentially threatened species, was performed for Walden, Walden II, and the entire area at the beginning of development for the area.

Mr. Horner stated that within the Applicant's response it was stated that there are no known State or Federally listed endangered species located on the site; that from the Homeowners Association perspective, the project is proposed to be under the same association regime, with shared amenities; that the amenities, located across the street at Walden, consist of an existing pool and clubhouse; that on the other side of Rt. 24, there is a clubhouse which is currently under construction; that the clubhouse will now be required to be completed by the 180th building permit; that the Walden III residents will have access to those amenities; that with the interception improvements, there are now crosswalks and a lighted interchange to allow for safe pedestrian transactions across the street; that the Villas at Walden have 100 townhomes; that Walden was approved for 265 single-family homes and the current proposal was for 21 single-family dwellings; that from a disclosure perspective for the existing Walden, all existing homeowners were notified within their public offering statement, which is required by law, that the subject area for Walden III was identified as an expansion area; that this notice was additionally placed in the Documents of Declaration to allow sufficient buffer of units to allow for the incorporation of this potential community and this disclosure was provided to every buyer within the Walden community and in connection with their contracts.

The Commission found that several people were present who wished to provide comment on the Application.

The Commission found that Mr. James McKeon spoke with concerns relating to the Application. Mr. McKeon stated he resided within the Villas at Walden; that there is a historic cemetery located on the site; that he questioned the proposed plan to maintain the integrity of the cemetery during construction, as well as after the homes are placed; that he believed the plan reflected the cemetery to be located between Lots 19, 20 and 21; that he believed the other communities had been maintaining the cemetery to date; that the people buried at the cemetery are the people their development streets are named after; that he did question if the amenities for Walden would be part of the amenities for Walden II and Walden III; that he would like to better understand what impact is being considered for the other communities; that the pool has a maximum occupancy of 40 people; that there is no clubhouse; that there are only changing rooms; that there is no parking with regards to requirements for a clubhouse, because they do not have a clubhouse; that the streets have been designated as no parking areas; that currently, for 100 townhomes and the homes within Walden and Walden II, there are only 16 parking spaces; that within Walden II, there are eight parking spaces; that there is an area designated on the plan for overflow parking, however that area is designated for school bus stop parking; that he understood the Commission had ruled on Condition No. 14 earlier in the meeting relating to increasing the number of permits before the construction is required to be completed for Walden I; that he questioned what the plan for the amenities would be, as the pool within Walden II cannot accommodate the proposed amount of people; that there is insufficient parking; that it was recently communicated by the Homeowners Association that the construction would be completed by September 2023, however he now understands the

Commission had increased the number of required building permits, which could drag the completion of the amenities out; that Schell is the Homeowners Association and Mr. Jon Horner, Vice President of the HOA, had conveyed through one of their representatives that the construction would be completed by September 2023.

Mr. Horner stated that Mr. Edward Otter performed a study on the cemetery to identify the meets and bounds of where the cemetery area was located, which created the lots to be designed as they are proposed; that the cemetery area has been identified; that a buffer fence will be installed around the cemetery area; that during development, temporary silt fencing will be placed around the area to designate the limit of disturbance; that after construction has been completed, a permanent fence will be installed to preserve and protect the cemetery area; that the HOA will maintain the cemetery area; that there is not much to the area other than typical landscaping; that the Villas at Walden ultimately ended up being developed by Lennar; that Lennar purchased the property, became the developer and completed all the homes and units; that he believed the plan was approved at two and a half parking spaces per unit, which was Code compliant; that after the plan was approved, complaints were received by residents in the community about parking on the streets in relation to the width of the streets in emergent situations; that members of the community reached out to the State Fire Marshal directly; that the State Fire Marshal stated the road was Code compliant, however was too narrow for on street parking; that per the State Fire Marshal's requirement, the HOA was compelled to create a rule which prohibits on street parking; that parking is available in front of the amenity, as well as within the designated overflow parking area; that there is no HOA rule prohibiting parking within the overflow area; that the overflow area is labeled for bus stop parking, but is also used for overflow parking; that there have been many conversations with Lennar relating to the potential for increasing parking in the area; that they had conversations with Lennar regarding Lennar installing parking on the HOA's land; that Lennar's position, as it was conveyed to him, was that everything was properly disclosed and that they had no desire to install additional parking; that from the HOA's perspective, the HOA board made the decision to not install additional parking, creating an additional expense, for parking that serves a limited number of people within the community; that parking is an ongoing discussion point, which is actively being had with Lennar and the members; that a meeting is currently being scheduled with the Villas at Walden and the HOA to discuss the situation further; that the current schedule for the amenities does anticipate the amenities to be completed in September 2023; that they requested the Commission grant them wiggle room by approving completion by the 180th building permit; that delays do happen in construction; that they are committed to moving full steam ahead; that the clubhouse construction is moving forward and is a huge priority for the team; that he believed the proposed timeline was still intact; that he will confirm that the HOA board member, who is also a community resident, is regularly communicating with him on dates and timelines for the construction schedule; that the residents are on top of them and they are on top of the issue; that he understood the delays had caused some reputational damage and they are doing their best to restore their reputation.

Chairman Wheatley questioned the absorption rate of the development within the last six months.

Mr. Horner stated he could not provide an exact number relating to the absorption rate; that he believed 137 building permits had been pulled; that the first Certificate of Occupancy was provided in March 2021; that within roughly two years they had pulled 137 building permits, equaling an estimate of approximately 65 per year; that he could not provide a number for the last six months; that sales have slowed down, but they typically maintain a healthy backlog and he would have to get back to the Commission with the absorption numbers for the last six months.

Chairman Wheatley stated he was trying to give those with an interest an estimated timeline associated with the 43 building permits and he did feel it was ambitious to think they would have 43 additional permits pulled by September 2023.

Mr. Horner stated he would not anticipate 43 building permits to be pulled by September; that there was wiggle room built into the request before the Commission; that while September is what the current schedule anticipates, one cannot predict the weather and other factors which may delay construction.

The Commission found that Mr. Daniel Jette spoke in opposition to the Application. Mr. Jette stated he resides within the Walden Villas; that he understood each home was proposed for four bedrooms and a minimum of two and a half parking spaces; that he felt the parking requirement was not met; that there are many single garage homes within the Walden communities, with very small driveways that do not provide the two and a half parking spaces required; that the overflow parking area is designated for school buses and parking for students waiting for the school bus; that they do not have a clubhouse; that all amenities were supposed to be completed in February 2023; that Councilman Mr. Mark Schaeffer issued a letter to Schell, notifying them that they were out of compliance; that he believed the letter was provided to Schell last week; that he questioned if the marshland was considered as open space; that he questioned if the marshland area was useable, and if not, he questioned how the area could be considered as open space; that there are bald eagles in the area; that he questioned if a concerted effort had been given to see if the eagles nested in the area; that he requested the Commission require the developer to complete the amenities across the street first, before disturbing all residents with trucks, work crews and new construction; that Sloan Street is a very small; that having large construction trucks on the small road, near the school bus stop causes him concern and the proposed entrance is located directly across from the bus stop.

Ms. Stevenson stated that bald eagles were no longer on the endangered species list.

Chairman Wheatley stated the County has specific requirements for parking and open space; that the County requirements specify what can be used as open space and how open space can be calculated, and that the application currently meets or exceeds the County's requirements for parking and open space.

The Commission found that Mr. Steven Juskiewicz spoke in opposition to the Application. Mr. Juskiewicz stated he currently has a house under contract within Walden I; that he found it interesting that the Commission was asking questions relating to the Applicant of the current property, which also relates an item of Other Business; that the Commission approved to increase the number of building permits to 180 for Walden I, which Schell must meet before pulling additional building permits needed for the clubhouse amenity; that he understood the current Application had no connection to the early decision made; that he is due to close on the home next week; that there are other people in his neighborhood who have been waiting a long time for the amenities to be built; that it was said the item of Other Business was for minor administrative changes, therefore, not subject to public comment; that he questioned what the mechanism was to decide what is a minor change, and what is a substantial change; that the decision to increase the building permits to 180 may have been a simple decision for the Commission, however the decision impacts many people; that he felt some incentive should be placed; that he requested the Commission to place pressure on subdivision developers to complete things they have promised to existing and future homeowners; that in today's environment, 180 building permits could take another year and a half; that the County is the only forcing function to ensure that developers live up to the expectations of the people they sold property to; that there had been debate relating to the additional lots being added to the existing HOA; that some could argue that more lots are better, as it will allow for more money to go into the HOA; that some would argue there are limited resources; that with the subject application, he found it disturbing that the questions being asked for the subject

application could have impacted the decision made for the item of Other Business; that he felt the definition of “significant change” should be more clearly codified within the County Code; that he found it interesting that the developer gave the excuse of the COVID-19 pandemic as the reasoning for the time extension, however, the same developer built a lot of houses during that time and he did not feel that building a house and building a clubhouse are radically different.

Chairman Wheatley stated the amenities currently do not exist and if the Commission were to deny the request, it would not guarantee the amenities would be built any faster.

Mr. Robertson stated in §99-9 it states what triggers a public hearing; that if there is a substantial change to an approved final site plan, it would require a new public hearing; that staff had made a determination that the item of Other Business was not considered a substantial change; that the Commission could have denied the request, and require the request go through a public hearing, which would have allowed everyone a chance to speak on that particular application; that when the final site plan was approved for Walden I, the Conditions of Approval referenced Certificates of Occupancy; that the issue with Certificates of Occupancy is that it is difficult for staff to track; that it is a lot easier to deny a building permit, rather than deny the Certificate of Occupancy when a resident is ready to go to closing; that by denying Certificates of Occupancy, it impacts third-parties, like the homebuyers; that the change to the 180th building permit, approved by the Commission was also significant, regardless of the number, to allow for better tracking which would be more equitable for the third-parties; that the County has no problem denying the issuance of building permits until certain things are completed; that amenities are now bonded with financial guarantees to ensure the work is completed; that a new Ordinance was introduced to County Council earlier in the week, which will change the requirement to 60% of all building permits issued; that this will allow the requirement to remain uniform throughout the County and currently the requirements are predictable within a range, but not uniform for every application.

Mr. Young stated with the interconnection of the Walden and Walden III in relation to the amenities, he anticipated foot traffic between the two properties, across Sloan Rd. and he questioned if the Applicant would be willing to work more closely with DelDOT for potential placement of a crosswalk or lighting in the area.

Mr. Horner stated they will work with DelDOT; that the entrance is required to be DelDOT compliant; that given the fact the amenities are located across the road, they are anticipating crosswalks in the area, and relating to lighting, they often adhered to DelDOT’s guidance.

Mr. Sechler stated there will be a crosswalk at the intersection of Sloan Road and Rt. 24, which will be signalized; that there will not be a crosswalk at the entrance going from Walden III to the Villas at Walden; that the area is considered a mid-block crosswalk and is discouraged for foot traffic; that foot traffic in that area will be required to walk to the intersection, across, then back, and there are pedestrian facilities for both sides.

Ms. Stevenson stated the Commission had set a precedent for when developers had developed properties located across the street from their main development, the Commission had previously required them to have amenities on both properties, in an effort to keep people from running across the street; that she would like to see this requirement be placed for the subject application; that she was not implying a pool needed to be placed at both location, however, some small amenities should be offered to minimize the foot traffic; that she would like to see parking provided for people picking up or dropping off their kids to the bus and one cannot state that development will not impact schools anymore, because it is no longer true.

Mr. Horner stated the proposed lots were intentionally oversized and pools are permitted; that their view of the Section was that the massively oversized lots will allow homeowners to opt to place individual pools, and with only 21 lots a community pool would not be beneficial.

Ms. Stevenson stated she understood and agreed a community pool should not be placed; however, she would like to see smaller amenities offered such as a tot lot, gazebo, barbecue area, or bocci ball court.

Mr. Horner stated that they would be open to the placement of reasonable amenities; that his Engineer stated it would be easy to provide parking towards the front of the site and they would not have an issue with providing a parking area.

The Commission found that Ms. Eul Lee spoke by teleconference with concerns relating to the placement of a crosswalk.

The Commission found that Ms. Jean Marie Ensore spoke by teleconference. The teleconference call was discontinued by the Commission, due to the provided comments being outside the scope of the subject public hearing.

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

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

In relation to 2022-08 Walden III. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 3-0.

The Commission took an extended recess to allow for the remedy of technical issues involving the online broadcast.

Recess

5:05 pm – 5:54

2022-09 Blackwater Village Expansion

A Coastal Area cluster subdivision to divide 7.37 acres +/- into six (6) single-family lots, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the east side of Chippewa Dive, an existing private street within the Blackwater Village subdivision, north of Vines Creek Road (Route 26). 911 Address: N/A. Tax Map Parcel: 134-11.00-14.01. Zoning District: MR (Medium-Density Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Subdivision Plat, the Applicant's Exhibit Booklet which contained a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Review letter, the Applicant's Environmental Assessment, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that three written comments and six mail returns were received and that the number of mail returns was not unusual, as staff did send out postcard notifications to 270 properties.

The Commission found that Mr. Alan Decktor, Professional Engineer with Pennoni, spoke on behalf of the Applicant, Keith Properties, Inc.; that also present were Mr. Richard Keith and his daughter, Ms. Casey Cole. Mr. Decktor stated the Application proposes six detached single-family dwellings on individual lots, as a permitted use following the height, area and bulk requirements stated in §115-34A of the Sussex County Code; that the property is zoned MR (Medium-Density Residential) District; that

the Applicant proposes to divide 7.37 acres into six lots, with the residual land to remain as open space; that the Applicant did name the project Black Water Village Expansion, which at the time, seemed like a great name; that the proposed subdivision is not considered part of the existing Blackwater Village, which was established in 1976; that the proposed subdivision, will receive a separate subdivision name through the Sussex County Mapping & Addressing Department; that Keith Properties, Inc. had owned the property for about 18 years; that Keith Properties, Inc. additionally owns some other undeveloped lots across the street of Chippewa Drive, from the subject property; that the property is located within the Coastal Area according to the 2019 Comprehensive Plan; that the Coastal Area is considered a Growth Area; that the property is located within the Investment Level 3 and Investment Level 4 according to the Strategies for State Policies and Spending Map; that an Environmental Assessment Report was completed on the property; that the project proposes approximately one lot per acre, which is a much lower than the density permitted with the MR Zoning District, being 4.35 lots per acre; that a 20-ft. forested buffer is proposed around the perimeter of the site; that the perimeter mostly contains existing woods and wetland areas; that the proposal of six lots is consistent with the trend of single-family residences along Chippewa Drive and within the Blackwater Village subdivision; that the project is in character with the nature of the area, as it provides for single-family detached lots, while preserving the natural habitats of existing wetlands and the approximately 70% of existing woods; that as part of the 1976 recorded plan for Blackwater Village, it showed the roadway of Chippewa Drive, accessing out to Vines Creek Rd.; that for unknown reasons, Chippewa Drive was never extended as part of the Blackwater Village subdivision; that there are approximately 1.48 acres tidal wetlands and 3.32 acres non-tidal wetlands located on the property; that the wetlands were delineated by Environmental Resources, Inc.; that a Jurisdictional Determination from the U.S. Army Corp of Engineers was obtained in September 2022; that they prepared an access letter as per coordination with the Planning & Zoning staff; that they had discussions with DelDOT relating to the area where Chippewa Drive's existing right of way intersects with Vines Creek Rd.; that there is an existing guardrail for safety due to steep slopes and the crossing of Blackwater Creek; that there are hundreds of feet of wetlands until a upland area is reached; that due to this, there is no option for connection at this location; that the parcel is within the Tier 1 Sanitary Sewer District; that the Applicant had spent years petitioning to get Sussex County Sewer to the parcel and Blackwater Village; that the Applicant's attempts were fruitful, as County Engineering has sewer construction scheduled to begin within the third quarter of 2023; that the property is also within Artesian's CPCN District, allowing for central water service to the property in the future; that Blackwater Village is currently on private septic and wells; that due to Artesian not having existing public water in the area, the Applicant would request temporary wells be used for the six proposed lots until a connection could be made to public water; that the existing Blackwater Village lots, located across the street from the site, are not located within Artesian's CPCN District area; that they did perform preliminary bulk grading; that there is a leftover soil stock pile located on the site, which had been located on the site for over 20 years; that the proposed subdivision would remove the existing stock pile and create feasible lots, which would be more consistent with the surrounding area and adjacent properties; that the Blackwater Village roads are not private, and publicly maintained by DelDOT as part of their capital project; that the Blackwater Village roads are considered local roads, which are designated Road No. 306210; that there had been some coordination with Sussex County and DelDOT relating to the extension of Chippewa Drive; that the determination was that DelDOT did not want anything to do with the extension of Chippewa Drive; that due to this, the extension would be build to Sussex County Engineering standards; that a maintenance agreement would be put into place, stating the six lots would be responsible for maintaining the life of that road section; that the project proposes minimal use of wetlands and floodplains; that the Jurisdictional Determination showed no impact is proposed to the wetlands; that they will provide a 50-ft. buffer from the tidal wetlands; that they propose a 25-ft. buffer to the rear building restriction line; that 15-ft. being behind the lot and 10-ft. located to the rear building line; that the Application predates the recently adopted Resource Buffer Ordinance; that the property is located within Flood Zone AE, which is designated with an elevation of seven feet;

that as part of the preliminary bulk grading plan, they had the proposed lots graded to an elevation eight or higher, to allow the lots to no longer be located within the flood plain; that the property is entirely located within an Excellent Groundwater Recharge Area; that the Code requires a limit of impervious area within Excellent Groundwater Recharge areas, being up to 35% of up to 60% climatic water study balance process; that the site is not located within a Well Head Protection Area; that they did perform a search relating to the Division of Historical and Cultural affairs, but found nothing; that the site consists of roughly five and half acres of existing woods and wetlands, which will be maintained; that with the proposed 20-ft. forested buffer, these areas are not proposed to be disturbed; that there will be a minimalization of tree, vegetation and soil removal from the site; that the main objective is to remove the stockpile located at the site and regrade the area, while maintaining the 70% of existing woods on the property; that with the proposal of six detached single-family dwellings, located on individual lots, which are consistent with neighboring properties, no screening from objectional features would be required; that the site will be serviced with central water by Artesian who holds the CPCN; that the property is located within Tier 1 of the Sussex County Sanitary Sewer District and will hopefully be available to sewer next year; that after the soil stockpile is removed and the pad sites are prepared, all erosion and sediment control measures would be in place as per Sussex Conservation District and DNREC requirements; that minimization of erosion and sedimentation are proposed to minimize changes in groundwater; that the stormwater measures would be handled by bio swales, which would discharge in a non-aggressive manner, into tidal waters; that the proposal is for six lots to be located at a dead-end road with a safe turn-around area, which will meet all Sussex County and State Fire Marshal requirements; that the proposed project will enhance and compliment the natural setting of the community; that the proposed project is not out of character with the surrounding area; that the values will increase over time; that the proposed subdivision is not adjacent to farmland, however the plan will include the §99-6(G)1-2 notes on the plan; that the proposed subdivision will have a positive benefit on schools, by generating economic benefits in the form of increased revenues through property taxes; that the proposed project is an internal subdivision extension of Chippewa Drive; that the six lots will have a negligible impact per the DelDOT Service Level Evaluation Response and will not have any impact to existing roadways within the area; that the six single-family dwellings, being located on individual lots is permitted using the height, area, and bulk requirements of the MR Zoning District; that no impact is anticipated to area waterways; that with the buffer provided for the six lots, stormwater runoff will be met by providing non-erosive best management practice (BMP) measures; that proposed Conditions of Approval were provided in the Exhibit Booklet for the Commission's review and consideration; that the proposed subdivision meets the general purpose of the Subdivision and Zoning Codes, by being located within an appropriate location, meeting the purpose of the Zoning District, being in character of the MR Zoning District and permitted uses, the conservation of property values and natural resources and being in accordance with the Comprehensive Plan to promote in accordance with the present and future needs, the health, safety, morals, convenience, order, prosperity and general welfare of Sussex County.

Ms. Stevenson stated she understood the proposed lots would be elevated to take them out of the flood plain and questioned if the Applicant is taking measures to ensure the runoff does not flood out the properties located across the street.

Mr. Mears questioned if the grade elevation proposed was similar to the grade elevation of adjacent properties.

Mr. Decktor stated the proposal is not to elevate the lots; that with the removal of the existing stockpile, the grade will be lowered to an elevation of 8-ft., which will maintain the lot water runoff; that the top of the existing soil stockpile is an elevation of 30-ft.; that the stockpile will be leveled a reduced grade, which is still above the flood plain elevation; that per their wetland delineation, there are random non-tidal wetlands located throughout the lots across the street; that the lots would be required to be elevated

on an individual basis; that they would most likely require approval from the U.S. Army Corp of Engineers to fill a portion of the lots; that this would be the goal, since Keith Properties, Inc. is the owner of the majority of the lots; that swales would be located within the right of way for the road, directing the run-off from the front of the lots to the tidal wetland areas and by doing this, would not allow impacts to nearby lots.

Chairman Wheatley stated he believed, if a road was built to a State standard, the State was required to accept the street; that he questioned if his statement was accurate; that he stated that it seemed odd to him, as DelDOT typically wants to be involved in issues involving roads and he could see the advantage for the developer, as Sussex County road standards would be cheaper than State standards.

Mr. Robertson stated he agreed that it is the assumption that the State must accept all streets built to State standards, however, he did not feel the answer was that simple.

Ms. Stevenson stated she would guess the existing State maintained streets, were probably not up to the current State road standards.

Mr. Decktor stated that included within Tab 3 of the Exhibit Book, was a letter from Mr. Todd Sammons with DelDOT; that the letter was written in 2019; that at the time, the owner of Lot 22 obtained a building permit, however, the road was approximately 100-ft. short; that this created a lot of onsite meetings between DelDOT and Sussex County and the letter reiterates the findings and decisions at that time.

The Commission found that two people were present who wished to speak on the Application.

The Commission found that Mr. Mark Wright spoke in support of the Application. Mr. Wright stated he and his parents purchased Lot 31 around the same time Keith Properties, Inc. purchased their properties; that he supported the proposed subdivision; that he did have concerns relating to the road; that currently, the road stops before it reaches his property; that he was concerned about the placement of a cul-de-sac for emergency vehicles; that originally the road was supposed to get built straight to Rt. 26; that if that will not be completed, he would request a cul-de-sac be stipulated for the proposed subdivision, to ensure proper turnaround is provided at the end of the street and he requested the road come all the way down to his property, rather than stopping six feet before his property line.

Chairman Wheatley stated the preliminary site plan reflects t-shaped turnarounds, rather than a round cul-de-sac and he requested Mr. Decktor speak to Mr. Wright's concerns relating to the road.

Mr. Decktor stated the road of Chippewa Drive is not part of the subject property; that Chippewa Drive is shown as an established right of way between the subject parcel and Blackwater Village; that as part of the proposed design, they provided a T-turnaround area, as defined by the State Fire Marshal's Office; that this area would allow emergency vehicles to back up and turn around; that they have extended the road as far as permitted without encroaching into the wetlands; that the entire area, which includes Lot 31, is impacted by wetlands; that over the last 40 years, the wetlands have grown and due to this, the road would not be permitted to extend to Mr. Wright's lot.

Mr. Robertson advised the Commission, the Applicant is not refusing to provide the road, rather the Applicant is not permitted to extend the road, as Lot 31 and the remaining area are all located within wetlands.

The Commission found that Mr. Gary Hornbacher spoke with questions relating to the Application. Mr. Hornbacher stated he is a 30 year resident, former President and Committee Chairman of Blackwater

Village; that he was designated the spokesperson on behalf of the current president of Blackwater Village; that he had questions relating to if the subdivision was proposed to become part of the existing Blackwater Village or not; that he personally was in support of the project, as the proposed lots consisted of a proper size; that three years ago they were approached with the idea the subdivision would be proposed; that there was an offer of potentially subsidizing new amenities for the community in exchange for annexing the proposed subdivision; that the idea died but raised some eyebrows; that no further dialogue was had over the past several years; that he now understands the project to be a stand-alone subdivision; that because the project is separate, they have no input on the process; that they wanted it to be known that they are interested and welcome the subdivision, upon addressing issues; that there is room for the two communities to work together; that the Blackwater Village covenants, articles and other literature provide for the exclusive use of the term “Blackwater Village”; that he requested the Commission make note of this for future marketing entities for the proposed community; that it was said the Applicant would like to have the subdivision favor the character of Blackwater Village to the extent possible; that he stated the situation becomes a bit complicated, as one side of Chippewa is under Blackwater Villages, who does not have paving or sidewalks, and the other side potentially is being mandated to respond to more restrictive requirements; that it would create an issue if both sides of the street were required to match, yet have different requirements and he wished the Applicant well.

Chairman Wheatley stated the marketing issue was beyond the scope of the Commission and would be considered a legal issue that would need to be addressed between the two communities.

The Commission found that Mr. Daniel Guy spoke with concerns relating to the Application. Mr. Guy stated Mr. Hornbacher proffered comments, that were not entirely endorsed by the Blackwater Village Homeowners Association; that he was not aware until the hearing that the proposed expansion would not be included within the Blackwater Village HOA; that he had concern relating to the only access to the proposed subdivision being through Blackwater Village; that years ago the HOA presented before the Zoning Commission for a different land use application; that due to the proposed traffic and narrowness of the roads, the Zoning Commission denied that land use application; that with the current Application, the Blackwater Village residents have no say over what the proposed properties would be used for; that he feared the proposed lots could be used for a commercial business; that at the last meeting, held in September 2022, it was said the potential sewer was on hold; that he was confused if the sewer would be provided through Blackwater Village or only be provided for the proposed subdivision and there are homes being built within Blackwater Village which are on septic.

Chairman Wheatley stated the lots proposed for single-family homes and commercial businesses would not be permitted and that the subdivision is proposed to be served by water and sewer.

Mr. Robertson stated the lots would not permit a Bed & Breakfast operation; however the single-family homes could be used for short-term rentals as Sussex County does not regulate short-term rentals; that per the Sussex County Engineering comments, the project is proposed to start the design phase in 2023, with the system being online and operating by the end of the fourth quarter in 2025; that if the Applicant should receive preliminary approval from the Commission, they are still required to obtain all agency approvals to receive final approval and he was unsure which direction the sewer would be run.

The Commission found that Ms. Rose Webb spoke in opposition to the Application. Ms. Webb stated she had concerns relating to safety; that the roads are narrow; that she believed traffic would travel Hiawatha Blvd., which has no street lighting; that throughout Blackwater Village there are only six lights; that it becomes very dark and very dangerous; that their community playground, basketball court, and pavilion are located along Hiawatha Blvd.; that the increased traffic will create more danger; that she was unsure if DelDOT was in charge of the roads; that DelDOT does not provide anything to their

roads and she questioned how they would be able to hold the lots accountable if vehicles drive too quickly.

Chairman Wheatley stated the roads belong to the State of Delaware, which allows the right for anyone to use the roads; that the Applicant is not requesting to use the roads; that the Applicant is requesting to subdivide the proposed property into the six lots and the Applicant already had permission to use the roads as they are considered public.

The Commission found that Mr. Richard Hughes with questions relating to the Application. Mr. Hughes stated he is in support of beautiful homes being built on the property; that he had a concern about the proposed subdivision not being part of the Blackwater Village HOA; that he questioned if the proposed lots will have street lighting on their street; that he questioned where the street light electricity would be generated from; that he questioned if the proposed lots would pay for the lighting or if the existing Blackwater Village HOA would be required to pay for the lighting; that he questioned who would handle snow removal and he stated they welcome the subdivision, but requested some accountability be given.

Chairman Wheatley stated if the lighting is installed it would be at the developer's expense and the proposed road would be considered private, requiring the six lot owners to maintain the road.

The Commission found that no one was present by teleconference who wished to speak on the Application.

Mr. Robertson questioned if the subdivision name would be changing to something different than Blackwater Village Expansion.

Mr. Decktor stated, in the beginning, the Applicant felt it would be a good name; that the property is separate from the existing Blackwater Villages; that the Applicant realized the confusion the name may cause; that due to this, they intend to change the name upon Mapping & Addressing approval and the six lots are completely separate from the existing Blackwater Village community.

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

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

In relation to 2022-09 Blackwater Village Expansion. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0.

2022-15 Lands of Gator & Associates, LLC (c/o James Grant)

A standard subdivision to divide 28.48 acres +/- into five (5) single-family lots, to be located on a certain parcel of land lying and being in Broad Kill Hundred, Sussex County. The property is lying on the north side of Burton Road (S.C.R. 241), approximately 1.0 mile west of Sand Hill Road (S.C.R. 319). 911 Address: 22187 Burton Road, Milton. Tax Parcel: 235-19.00-7.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Subdivision Plan, the Exhibit Booklet, the Applicant's Chapter 99-9C response, a letter received from the Sussex County Engineering Department Utility Planning Division, and a letter received from DNREC's Division of Watershed Stewardship. Mr. Whitehouse advised the Commission zero comments were received for the Application.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, spoke on behalf of the Applicant, Gator & Associates, LLC; that also present was Mr. James Grant, who is the managing member of Gator & Associates, LLC. Mr. Davidson stated that the Application request was for four additional lots to be located along Burton Pond, just outside of Milton; that the site is approximately 28.48 acres; that each lot would be one acre in size, which exceeds the minimum requirement under the permitted uses for standard lot subdivisions to be located on $\frac{3}{4}$ acre lots; that the proposed lots are 25% larger than the requirement; that according to the 2019 Comprehensive Plan, the site is located within the Low Density Area; that the four lots meet the requirements of the Low Density Area, which specifically state when on-site septic systems are used, single-family detached homes are permitted on minimum $\frac{3}{4}$ acre lots; that the remaining land would consist of just over 24 acres, located to the back of the property; that the remaining land is owned by Mr. James Grant; that in 2019, a feasibility study was performed for the entire 28 acre parcel; that the feasibility study was performed for a proposed subdivision at that time; that DNREC also provided a letter at that time; that the feasibility study confirmed that each lot would be capable of handling a gravity disposal and full depth gravity system; that site evaluations were submitted confirming all the lots along the road frontage can handle full depth gravity septic systems; that the four lot subdivision is consistent with the area along Burton Rd.; that there are no wetlands located on the property; that the lots are located within Flood Zone X according to the FEMA Flood Maps; that there are no natural or historical features located on the property; that due to the fact the lots sizes are 25% larger than the minimum required lot size, it can be stated that the open space per lot will be greater, offering more yard space for recreation, gardening, and landscape planning areas; that cut and fill will be limited to those instances where it is required to achieve accessible building sites and on site wastewater disposal system placement; that the majority of the trees are along the front portions of the site; that the existing trees will most likely remain; that out of the four proposed lots, three of the lots have been built; that the majority of the trees have been retained by the builder; that nothing objectionable is being proposed, which would require screening from neighboring properties; that each lot will have individual on site septic and well systems, as approved by DNREC; that each lot will be planted, fertilized, seeded and maintained by each lot owner; that positive drainage will occur from each of the houses; that as required by the Sussex County Building Code Department, each house plan is required to be submitted to Sussex Conservation District (SCD) for approval; that DeIDOT approval will be obtained for the entrance locations for the subdivision; that there are no anticipated impact on area property values, as brand new homes are proposed to be built on each individual lot; that the houses being constructed on the previous four lots, are very large, nice types of single-family homes; that the proposed lots are subject to the restrictions of §99-6(G)(1-2) and are currently noted on the preliminary subdivision plan; that the project will have a positive benefit on schools, by generating the economic benefits in the form of increased revenue; that the four proposed lots will have a diminutive impact on area roadways; that the proposed subdivision is compatible with the surrounding areas along Burton Road; that there are approximately over 30 individual lots which have been parceled off other lands along the entire stretch of Burton Road; that there will be no impact on area waterways by the subdivision; that proposed Conditions of Approval were submitted for the Commission's consideration; that the Applicant feels the proposed subdivision is in accordance with the Comprehensive Plan, Subdivision and Zoning Codes, and meets the present and future needs, as well as the health, safety, morals, convenience, order, prosperity and general welfare of Sussex County.

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

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

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

In relation to 2022-15 Lands of Gator & Associates, LLC (c/o James Grant). Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 3-0.

C/U 2350 Beaver Dam Enterprises, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS. The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibit Booklet, the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, a letter from the U.S. Army Corp of Engineers, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that a four-signature petition was received in support of the Application.

The Commission found that Ms. Mackenzie Peet, Esq. with Baird Mandalas Brockstedt Federico & Cardea spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present were Mr. Anton Balakin, on behalf of the Applicant, and Mr. Kenneth Christenbury, P.E., President of Axiom Engineering, LLC. Ms. Peet stated the Applicant previously met with Director Jamie Whitehouse for his pre-submittal meeting on January 12th, 2022, where it was determined his proposed use could proceed as a Conditional Use; that subsequently, the Applicant submitted a Conditional Use application on February 4th, 2022; that the request is for a Conditional Use of land within the AR-1 (Agricultural Residential) Zoning District to convert an existing pole building into two residential units; that the property consist of 2.144 acres, located on Saddle Ridge Way in Lewes; that the property is accessed from Beaver Dam Rd.; that adjacent properties are zoned AR-1 (Agricultural Residential), GR (General Residential) and MR (Medium-Density Residential); that the surrounding area has largely been developed with single-family residential units and number of surrounding subdivisions; that the GR and MR zoned properties are at the location of Oak Crest Farms; that there are other scattered existing residential developments near the property; that there are many Conditional Uses approved in the area, as confirmed by the Planning & Zoning Map and the Office of Planning & Zoning Memorandum; that the Applicant submitted a number of exhibits, consisting of the Conditional Use Application and deed, property information and updated legal description; that within Exhibit 3, a Minor Subdivision Plan for Iron Horse Ranch was submitted; that the subdivision plan includes the construction plan and site distance triangle; that the plan shows access to the site from Beaver Dam Rd, by a gravel road easement, which continues to the existing pole building; that the existing pole building makes up about seven percent of the .135 acre site; that the undeveloped forest area make up approximately 1.577 acres (70%) of the site; that the gravel driveway and gravel parking area consist of the remaining .432 acre (23%) of the site; that also submitted were the Sussex County aerial maps and images of the property; that the photos reflect that the property is very well maintained and currently in good condition; that Exhibit 7 contains the determination from the U.S. Army Corp of Engineers, confirming that no wetlands are located on the site; that Exhibit A contains proposed Conditions of Approval; that the Future Land Use Map indicates the property is located within the Low Density Area; that all properties within the immediate vicinity are also located within the Low Density Area; that Low Density Areas are considered to be rural areas, in contrast to growth areas; that as of 2018, all lands designated as Low Density Areas according to the Comprehensive Plan, are also zoned AR-1 (Agricultural Residential); that the Comprehensive Plan provides guidelines that should be applied to future growth in Low Density Areas; that residential growth is expected, with the intent to maintain the rural landscape; that the Applicant

believes the proposed Conditional Use plan does meet the requirements with the significant amount of undeveloped area; that the proposed use may be permitted as a Conditional Use when approved in accordance with Article 24 of the Code, when the purposes of the AR-1 Chapter are more fully met; that the purpose of the AR-1 District is to provide a full range of agricultural activities and to protect agricultural lands, as one of the County's most valuable natural resources from the depreciating effect of objectionable hazardous and unsightly uses; that the Applicant should also protect established agricultural operation and activities; that these districts are also intended for protection of watershed, water resources, forest areas, and scenic views, while providing low density residential development; that §115-171 details the purpose of Article 24 relating to Conditional Uses, 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; that these uses are generally of public or semi-public character; that the uses 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 the possible impact not only on neighboring properties, but on a large section of the County; that this requires the exercise of planning judgement on location and site plan; that the proposed use is of semi-public character, as it proposes a low density development, at less than one unit per acre, with two units proposed on a 2.14 acre parcel with 70% of the site being undeveloped; that each unit will consist of three bedrooms and two bathrooms; that the Applicant intends to rent the units on an annual basis; that there is a significant demand for rental units in Lewes and Rehoboth areas, especially rental units offered on an annual basis in Sussex County; that the proposed use is compatible with surrounding residential uses, with lower density in comparison to the single-family residential uses nearby being mostly constructed at two units to the acre or as a cluster subdivision; that public utilities are available to the site; that the units will be served by public water, provided by Tidewater and sewer, provided by Artesian; that access to the site is by an easement off Beaver Dam Rd.; that DelDOT's response to the Service Level Evaluation Request provided that the use will generate fewer than 50 vehicle trips per day; that DelDOT considers the development's traffic to be diminutive; that Code compliant parking will be provided with four spaces, provided parking is proposed towards the rear of the property; that the use is not anticipated to adversely impact neighboring properties as the site has an existing vegetative buffer screening the proposed use from adjacent properties; that one letter supporting the Application was also submitted; that there are a number of more intensive uses located within the surrounding area; that the Office of Planning & Zoning's Memorandum reflects 23 Conditional Uses in the area, as well as confirmed the proposed use is consistent with the design and land uses in the area and for the reasons stated, the Applicant respectfully requested the Commission's recommendation of approval for the proposed Application.

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

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

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

In relation to C/U 2350 Beaver Dam Enterprises, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0.

ORD. 23-04

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance as it was introduced by County Council and one comment letter. Mr. Whitehouse advised the Commission that the comment letter was received the same day of the hearing and it had been circulated to the Commission.

The Commission found that Mr. Vince Robertson, Sussex County Assistant Attorney spoke on behalf of the proposed Ordinance. Mr. Robertson stated the ordinance essentially codifies standard conditions and requirements for solar farms; that there was a typographical error within Line 64 of the proposed ordinance; that Line 64 should state, "*the landscape buffer strip shall remain free and clear*"; that for whatever reason, the word *the* and the word *landscape* were omitted; that the ordinance is proposed to address single-use solar farms, similar to the solar farm applications previously acted upon earlier in the meeting, and a Conditional Use is currently not required, nor has it ever been required, for solar to be placed on someone's home or accessory building.

Mr. Whitehouse stated it had been a long-established practice of the Planning & Zoning Department to permit solar panels proposed to be placed on a residential roof, or the placement of a ground-mounted solar array within the curtilage of an already existing dwelling, that the proposed ordinance seeks to confirm this as a permitted use; that the permitted accessory use relating to solar farms is not currently placed in writing anywhere within the County Code and in conjunction with the special requirements that Mr. Robertson was referring to, the ordinance additionally seeks to clarify the longstanding practice as a permitted accessory use.

The Commission found one person was present in the room who wished to speak on the ordinance Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the ordinance Application. Mr. Hutt stated in §115-194.5, subsection A, beginning at Line 118 states, *that solar panels and similar uses that are accessory to the principal use on the same lot and not used for commercial purposes shall be permitted within all districts*; that in his mind, solar panels are almost always used for a commercial purpose, whether it is residential or commercial, the solar panels are always providing money and/or electricity back, creating a credit or money back depending on the type of arrangement; that by stating that solar use is not to be for commercial purpose concerned him; that he felt the ordinance will create a difficult definition for the Mr. Whitehouse and the Planning & Zoning staff to determine; that all of us will not be present forever; that the history and definition may be lost in time with the current definition being unclear; that his second concern related to the determination of an ancillary use of a property with a Conditional Use; that hypothetically, if he wanted to place solar panels on the commercial outlet stores, the solar panels would clearly be an ancillary use to the permitted use within the C-1 District as a permitted use; that he questioned, if he applied for a use, under a Conditional Use, does it then make every other use on the property ancillary; that he questioned if solar panels would be considered an ancillary use on a Conditional Use property and he believed his concerns are concerns the County will face within in the near term future.

Chairman Wheatley questioned how Mr. Hutt would personally answer his question.

Mr. Hutt stated he felt the fewer public hearings he is required to attend would be a benefit for his clients; that if solar panels were to be considered an ancillary use for Conditional Use properties, his concern would go back to the term *for commercial use*, and for example, if a self-storage facility were to place solar panels, the self-storage facility will most likely not need all of the electricity generated by the solar panels and therefore would be considered a commercial purpose and he could not provide an answer to the issues relating to the *commercial* term, as there are many variables to consider.

Chairman Wheatley stated he was agreeable to solar panels being considered an ancillary use, as he felt solar panels would be similar to heating or cooling systems and security lights.

Mr. Young suggested to the Commission that the amount of electricity generated could be considered; that the solar farm arrays would be generating megawatts of power, as opposed to a residential panel which may only supply a single residence and may supply some power back into the grid.

Ms. Stevenson stated the ordinance requires everyone to have a vegetative buffer, however, the Commission approved a solar farm with no buffer earlier in the meeting.

Chairman Wheatley stated the ordinance is mostly related to solar farm applications, and he felt there needed to be some way to differentiate between applications.

Mr. Robertson stated they may need to pull the placement of a buffer as a requirement within the ordinance.

The Commission found one person was present by teleconference who wished to speak on the Application.

The Commission found that Mr. Michael Riemann, P.E. spoke by teleconference on behalf of the American Council of Engineering Companies of Delaware (ACEC). Mr. Riemann stated he is also an engineer with Becker Morgan Group, Inc.; that ACEC members, as well as Becker Morgan, had a lot of experience processing solar plans; that he personally was involved in the newly adopted Solar Ordinance for Kent County; that they do appreciate the proposed ordinance; that they desire clarity and transparency on what they should know and what the requirements will be; that he felt the proposed ordinance in large part provided these things; that they are generally supportive of the ordinance, with no real objections; that they did provide comments and recommendation within a submitted letter; that they would suggest a setback of 75-ft. versus 100-ft., which would be more consistent to setbacks in other regions; that the primary purpose of setbacks relating to solar arrays is that residents do not want to see them; that 75-ft would provide ample room for provided buffers from adjacent properties; that they would suggest consistently using the term *solar panel* within the ordinance; that some confusion they have seen in other regions relate to where the setbacks required from, such as the fence which encloses the solar field or the actual solar panels; that they had no objection to the landscape buffer; that they would suggest clarification be given for the circumstance the solar panels are adjacent to existing woods and/or screening, therefore not necessarily having a need for an additional buffer in that location; that their biggest request was for the County to find some way for solar farms to be permitted as a by-right use; that the ordinance maintains the Conditional Use requirement; that the Conditional Use is a lengthy process, taking a year or more; that requirements within the ordinance will answer many of the concerns typically raised by the public; that solar farms create a minimal impact; that there is no increase to traffic, no noise, no smell or run off; that the majority of the objects they typically hear are related to visibility screening and decommissioning; that the proposed ordinance properly addresses these concerns with the requirement of a Decommissioning Plan and bonding to be put into place; that there has not been any significant opposition to any of the solar applications which had previously been heard by the Commission; that Kent County created an acreage requirement for the by-right use for solar projects; that in Kent County, the solar project is only required to go through the Conditional Use process if someone where to object, otherwise, it is processed under Administrative Review; that Kent County staff notify neighbors; that if objection is raised the project is required to go through the Conditional Use process; that this process is only for applications under 40 to 50 acres; that all projects over 50 acres are

considered a large-scale corporation, being required to go through their Conditional Use process and he stated those were an overview of their main suggestions to the proposed ordinance.

Ms. Stevenson stated she had a concern that the proposed ordinance could potentially preclude people from farming the property.

Chairman Wheatley stated he envisioned a situation where, if the land values supported it, one could build a steel structure with long clear spans underneath and the solar panels would be above, which would allow access to the sun and the ability to grow vegetation.

Ms. Stevenson advised the Commission that one of the major complaints relating to solar farms is that land is being taken for solar when it could be used for growing crops.

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

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

In relation to ORD. 23-04. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 3-0.

Meeting adjourned at 7:32 p.m.

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