

**THE MINUTES OF THE REGULAR MEETING OF MARCH 24, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, March 24, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse stated the agenda was revised on March 21, 2022, at 6:00 p.m. to remove Subdivision 2021-23 Stillwater Harbor from the Agenda; that the Applicant has requested the Public Hearing for this application be postponed, and once a new hearing date is identified, the application will be re-noticed for a future Planning & Zoning Commission meeting date.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Agenda as revised. Motion carried 5 - 0.

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the February 17, 2022, Planning and Zoning Commission meeting as circulated Motion carried 5 – 0

**OTHER BUSINESS**

**(2019-04) Sloan Family Subdivision**

**Final Subdivision Plan**

This is a Final Subdivision Plan to subdivide 7.749 +/- acres into eleven (11) single-family lots, private roads, and open space. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, May 9, 2019. The property is located on the northeast side of Pinewater Drive, a private road within the Pinewater Subdivision. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcels: 234-17.12-5.00, 5.01, & 5.02. Staff are in receipt of all agency approvals.

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

**(S-18-85) Sage Life Rehoboth**

**Revised Final Site Plan**

This is a Revised Final Site Plan for the construction of a proposed 3-story 160,100 +/- square foot 144 unit assisted living facility, parking, and other site improvements. A Special Use Exception (Case No. 12066) was granted by the Board of Adjustment for a “convalescent home, nursing home, and/or homes for the aged” on December 11, 2017. Final Site Plan approval was previously granted by the Planning and Zoning Commission at their meeting of Thursday, October 1, 2019. The site was considered to be under “Substantial Construction” on February 2, 2021, through a site visit. The property is located on the southwest side of Plantations Road (Rt. 1D). The Revised Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 334-12.00-52.01. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Final Site Plan. Motion carried 5-0.

**S-18-11 Two Farms Retail #956**

**Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the reconfiguration of a previously approved set of two (2) retail buildings into one (1) 12,050 square foot retail building. This revised plan proposes a net reduction of 2,900 square feet of gross area. Parking exceeds the 60 spaces that will now be required for the revised plan. This site received preliminary site plan approval from the Commission on April 12<sup>th</sup>, 2018, and as granted by Commission, the site plan received final approval from staff on June 25<sup>th</sup>, 2020. The previous approval included an accepted waiver from interconnectivity and staff note that the applicant continues to wish to be waived from the interconnectivity requirement. This Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: B-1 (Neighborhood Business District). Tax Parcel: 135-11.00-78.00. Staff are awaiting agency approvals.

Mr. Chase Phillips confirmed that the property is located at the corner of Rt. 9, Lewes Georgetown Hwy., and Gravel Hill Rd; that the Site Plan received preliminary approval in April 2018, and staff granted final approval in 2020.

Ms. Stevenson questioned why the Commission would have previously approved a waiver to interconnectivity.

Chairman Wheatley questioned why the Site Plan was back to the Commission as a Revised Preliminary Site Plan and not a Revised Final Site Plan.

Mr. Phillips stated approvals from Sussex Conservation District and Fire Marshal Office are required; that the site plan can be approved as a preliminary with final approval by staff and the adjacent property to the south, with which the subject property could be interconnected, is a very small and narrow C-1 (General Commercial) property.

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

The vote by roll call; Mr. Hopkins – yea, Ms. Stevenson – nay, Chairman Wheatley – yea, Ms. Wingate – yea, Mr. Mears - yea

**(S-21-40) Nguyen Multi-Family Dwelling**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of a multi-family dwelling structure containing five (5) units. The Sussex County Council approved a Conditional Use (CU 2164) at their meeting on April 16, 2019, through Ordinance No. 2647. Subsequently, the applicant submitted a request for an extension of the Conditional Use approval. At their meeting of February 22, 2022, the Sussex County Council approved a six (6) month extension of the Conditional Use which will expire on October 16, 2022. Included in the Plan are the provision of sixteen (16) parking spaces, sidewalks along the frontage on Old Landing Road, and a twenty (20) foot wide landscaped buffer. The applicant's Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: MR (Medium Density Residential). Tax Parcel: 334-19.00-1.06. Staff are in receipt of all agency approvals; therefore, the plan can be considered for preliminary and final approvals.

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

**Lands of Jane P. Locke**

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Plan for the subdivision of a 106.76 acre +/- parcel of land into (1) lot and residual lands off of a proposed 50-foot ingress/egress easement. Proposed Lot 1 consists of 0.99 acres +/- and the residual lands consist of 105.77 acres +/- . The property is located on the east side of Bloxom School Road (S.C.R. 553A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 531-6.00-44.00. Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the minor subdivision off a 50-ft. easement with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Sylvester Hicks, Ricky Hicks, & Alberta Harmon**

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Plan for the subdivision of a 2.37 acre +/- parcel of land into (1) lot and residual lands off a proposed 50-foot ingress/egress easement. Proposed Lot 1 consists of 0.82 acres +/- and the residual lands consist of 1.55 acres +/- . The property is located on the northeast side of Crooked Road (S.C.R. 636). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: GR (General Residential District). Tax Parcel: 230-14.00-133.00. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the minor subdivision off a 50-ft. easement was final. Motion carried 5-0.

**Lands of Jocelyn Huff**

Minor Subdivision off a 50-foot easement

This is a Preliminary Minor Subdivision Plan for the subdivision of a 41.075 acre +/- parcel of land into three (3) lots and residual lands off of a proposed 50-foot ingress/egress access easement over an existing driveway. Proposed lot one (1) consists of 1.565 acres +/-; proposed lot two (2) consists of 1.3421 acres +/-; proposed lot three (3) consists of 1.49098 acres +/-; the residual land consists of 36.758 acres +/- . The property is located on the north side of Huff Road (S.C.R. 252). The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 235-24.00-38.05. Staff are awaiting agency approvals.

Ms. Stevenson stated she would like to see an agreement in place regarding the maintenance responsibilities of the roads.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the minor subdivision off a 50-ft. easement. Motion carried 5-0.

**Lands of Sharp Farm Limited Partnership**

Minor Subdivision off a 50-foot easement

This is a concept plan for a proposed subdivision of 314.217 acres +/- into two (2) lots and residual lands off of a proposed 50' wide ingress/egress access easement over an existing paved road. Proposed Lot A consists of approximately 1.00 acres +/-; proposed Lot B consists of approximately 2.8 acres +/-; the residual lands consist of approximately 310.417 acres +/- . This property is located on the east side of

Sharps Road (S.C.R. 200). This is a concept plan only and a formal subdivision plan will be submitted upon approval of the concept plan. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 330-8.00-29.00.

Ms. Stevenson questioned if the road was included within either parcel and if an easement would be created to access the parcels.

Mr. Phillips confirmed that the parcels are not located within the proposed easement.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve as a concept the minor subdivision off a 50-ft. easement. Motion carried 5-0.

### OLD BUSINESS

#### **C/U 2285 Ashley DiMichele**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential Zoning District for a tourist home to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.831 acres, more or less.** The property is lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257). 911 Address: 26182 Cave Neck Road, Milton. Tax Parcel: 235-21.00-48.00

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

Ms. Stevenson moved that the Commission recommend a denial of C/U 2285 for Ashley DiMichele for a tourist home based upon the record made during the public hearing and for the following reasons:

1. The Applicant is requesting a conditional use to operate a tourist home using an RV camper on her property as the home. Based upon the record, it is intended to be rented on a short-term basis through services such as Airbnb or VRBO.
2. The RV camper is not on a fixed foundation, and it does not have permanent utility connections. Instead, the record indicates that water service is via a hose connection, and wastewater is held in a tank within the RV Camper that is emptied on an as-needed basis.
3. The use as an RV Camper cannot be considered a “dwelling” under the applicable Codes, including the County Building Code. Although the use was informally referred to as a “tiny home” at times, it cannot be considered a “home” because it is not habitable as a “dwelling” under our applicable Codes.
4. This use is essentially a one-camper campground. There are specific requirements in the Sussex County Zoning Code for campgrounds and these apply whether the request is for 1 or 100 campsites. All campsites within Sussex County must comply with these requirements.
5. Section 115-172H of the Sussex County Zoning Code regulates the use of “mobile campers, tents, camp trailers, touring vans and the like”, and several of the placement requirements for these campsites are not satisfied with this application.
6. Section 115-172H requires access to the campsite to be via an easement that has a width of at least 50 feet. This section also requires all interior drive easements to have paving that is 24 feet wide within a 30 foot right of way. That requirement is not satisfied here.
7. Section 115-172H requires each campsite to be at least 400 feet from any existing dwelling on the property of other ownership. This RV Camper and campsite is not 400 feet from dwellings of other ownership on Mercury Lane. This requirement is not satisfied.
8. Section 115-172H requires every campsite to have an area of at least 2,000 square feet and a width of not less than 40 feet. It also requires campsites to have a landscaped space that is at

least 50 feet wide along all boundaries that is free of buildings and streets. These requirements are not satisfied here.

9. Even though this is just one campsite with one RV Camper, it is held to the same requirements as larger campgrounds. Since it does not meet those standards, and since it cannot be considered a “dwelling” since it is undersized, does not have proper utility connections, and does not have a foundation, the application should be denied.
10. While this application was for an RV camper to be used for short-term vacation rentals and not for housing, it provides a good opportunity to start the larger conversation of how the County should address “tiny homes” in the future. Tiny homes can provide an affordable housing option for residents of Sussex County with the proper standards in place governing them. I would recommend that County Council look at ways to regulate and permit tiny homes as dwellings.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried to recommend denial of C/U 2285 Ashley DiMichele for the reasons stated in the motion. Motion carried 4-1.

The vote by roll call; Mr. Hopkins – nay, Ms. Stevenson – yea, Chairman Wheatley – yea, Ms. Wingate – yea, Mr. Mears – yea

**C/U 2287 Danielle Roach**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CRAFT BUSINESS WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS.** The property is lying on the northwest side of Pine Road. 911 Address: 22928 Pine Road. Tax Parcel: 234-12.18-41.00.

The Commission discussed the Application which has been deferred since February 17, 2022.

Mr. Mears moved that the Commission recommend approval of C/U 2287, Danielle Roach, for a Condition Use to allow a small craft business, but without outdoor storage, based on the record made during the public hearing and for the following reasons:

1. The Applicant seeks this Conditional Use so that she and her husband can continue to operate their small home-based business converting used wooden barrels into furniture and other household-type uses.
2. Based on the testimony given during the hearing, this use is very nearly a home occupation. It could possibly be considered a home occupation under the Sussex County Zoning Code if not for the outside storage of barrels that are proposed.
3. The location is within an existing, but an older, subdivision. It does not appear that there are any restrictive covenants that would prohibit this small business use in this location. However, the Commission is reluctant to establish conditional uses to operate a business in an otherwise residential subdivision. As a result, it is appropriate to include limitations on this recommendation.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
5. No parties appeared in opposition to this Application.
6. This recommendation is subject to the following conditions:
  - A. The use shall be limited to the Applicant’s intended use of converting used wooden barrels into household furnishings and other similar items. No other types of manufacturing shall occur on the site.

- B. No retail sales shall occur from the site.
- C. The barrels and other materials used in this business shall only be stored inside of a structure on the site. Any new structures must comply with all setbacks and their location must be shown on the Final Site Plan.
- D. All work associated with this use shall occur indoors.
- E. Because this use is located in a residential subdivision and because no retail sales are permitted from the site, there shall not be any signage advertising the business on the site.
- F. The failure to comply with any of these conditions may result in termination of this Conditional Use.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Committee.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2287 Danielle Roach for the reasons and conditions stated in the motion. Motion carried 5-0.

**C/Z 1951 Shiloh Investments, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 4.17 acres, more or less.** The property is lying on the south side of Lewes Georgetown Highway (Rt. 9) approximately 0.15-miles east of the intersection of Hudson Road (S.C.R. 258.) and Fisher Road (S.C.R. 262). 911 Address: N/A. Tax Parcel: 235-30.00-50.01

The Commission discussed the Application which has been deferred since February 17, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1951 for Shiloh Investments, LLC for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based on the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is currently zoned AR-1, but it is in the Cool Spring area along Route 9 where other commercial zonings and commercial uses exist. It is surrounded on both sides by commercially zoned property, and it is next to the future extension of the Lewes-to-Georgetown rail path. This is an appropriate location for the C-2 zoning.
3. C-2 Zoning at this location along Route 9 will benefit nearby residents of Sussex County by providing a commercial location for local shopping and similar uses without having to travel to Lewes, Milton, Long Neck, or Georgetown.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The Sussex County Land Use Plan and Future Land Use Map supports this location for C-2 Zoning.
6. It is anticipated that the site will have central water and sewer service.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to the rezoning application.
9. Any future use of the property will be subject to a Site Plan Review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1951 Shiloh Investments, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

**C/Z 1952 Samantha Broadhurst**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 22.60 acres, more or less. The property is lying on the west side of Dupont Blvd. (Rt. 113) approximately 0.33 mile north of Wilson Hill Rd. (S.C.R. 244). 911 Address: N/A. Tax Parcel: 135-9.00-26.00**

The Commission discussed the Application which has been deferred since February 17, 2022.

Ms. Wingate moved that the Commission recommend denial of C/Z 1952 for Samantha Broadhurst, for a Change in Zone from AR-1 Agricultural Zoning to C-2 Medium Commercial Zoning based on the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads. While this property is located along Route 113, the Applicant has stated that the only intended use of the property at this time is to construct an off-premises billboard-style sign. This is not an appropriate reason to rezone this property to C-2 zoning.
2. The Applicant has sought to rezone the entire 22.60-acre property to C-2, even though the intended use for off-premises billboard-style signs would only be needed along the immediate frontage along Route 113. There is no basis for rezoning the entire 22.60-acre parcel to C-2 Zoning.
3. The property is surrounded by properties that are zoned AR-1 and much of this adjacent land is protected under the ownership of the State of Delaware. This is not an appropriate location for C-2 Zoning.
4. Although the Applicant has stated that the intended use is to allow billboards to be constructed on the site, any of the permitted uses allowed in the C-2 Zone could occur on this large parcel of property. These potential uses are not compatible with the undeveloped and protected lands that surround this 22.60-acre property.
5. It does not appear in the record that the property will be served by central water and sewer to support the potential uses allowed under the C-2 Zoning that is being sought by this Applicant.
6. The proposed rezoning for the sole purpose of constructing a billboard does not promote the health, safety, welfare, and orderly growth of Sussex County.
7. For all these reasons, it is my recommendation that this rezoning should be denied.

Motion by Ms. Wingate, seconded by Mr. Mears and carried to recommend denial of C/Z 1952 Samantha Broadhurst for the reasons stated in the motion. Motion carried 4-1.

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

**2022-01 Henlopen Properties, LLC**

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

The Commission discussed the Application which has been deferred since March 10, 2022.

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

**C/Z 1967 Henlopen Properties, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Residential District for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 43.777 acres, more or less.** The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the Application which has been deferred since March 10, 2022.

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

**C/Z 1968 Henlopen Properties, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 3.041 acres, more or less.** The property is lying on the southeast side of Kings Highway (Rt. 9) approximately 0.11-mile northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the Application which has been deferred since March 10, 2022.

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

**C/U 2334 Henlopen Properties, LLC**

**An Ordinance to grant a Conditional Use of land in a MR Medium Residential District for multi-family (267 units) to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 43.777 acres, more or less.** The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the Application which has been deferred since March 10, 2022.

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

PUBLIC HEARINGS

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

**2021-22 The Woods at Burton's Pond Extended** – A major subdivision to divide 15.009 acres +/- into nineteen (19) 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 south side of Conley's Chapel Road (S.C.R. 280B), approximately 0.4 mile east of Beaver Dam Road (S.C.R. 285) and is accessed from Artesian Avenue within The Woods at Burton's Pond Subdivision. Tax Parcel: 234-11.00-72.04. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Subdivision Plan, Exhibit Booklet, a waiver request for the landscape buffer, staff memorandum, staff analysis, Technical Advisory (TAC) comments, a letter from the Sussex County Engineering Department Utility Planning Division, the Applicant's Chapter 99-9C response, a copy of the Planning & Zoning Commission meeting minutes of June 11, 2009, Habitat Evaluation Report, five letters of written comment, which have been circulated to the Commission and two of those letters appear as duplicates.

The Commission found that Ms. Mackenzie Peet, Esq. spoke on behalf of the Application; that she is representing the Applicant, Spring Cap II, LLC; that also present is Mr. Ring Lardner, Principal and Professional Engineer with Davis, Bowen and Friedel, Inc. and Mr. Justin Hensley, a representative of the developer; that the Applicant submitted an extensive exhibit booklet, which has been before the Commission for at least ten days, that she submitted proposed Conditions of Approval into the record for review; that the project is located on the southside of Conleys Chapel Rd., approximately 0.4-mile east of Beaver Dam Rd. in Lewes, Delaware; that this project is located adjacent to the existing Woods at Burton Pond subdivision, as well as a number of other subdivisions; that these other subdivisions include Beaver Dam Acres, Holly Oak, Spring Breeze, Rich Field Acres, Lochwood, Headwater Cove and Acadia; that the Applicant proposes Woods at Burton Pond Extended, to divide 15.01-acres of vacant land into 19 single-family lots, as a cluster subdivision in the AR-1 (Agricultural Residential) Zoning District, that the density proposed is 1.27 units per acre; that The Woods at Burton Pond subdivision was recorded on June 26, 2016, in Plot Book 232, Page 86; that Mr. Ring Ladner was the engineer of the original subdivision; that the subject parcel is located within the AR-1 (Agricultural Residential) Zoning District; that all proposed structures will comply with height, area and bulk requirements of the Code; that the project complies with the purpose of the Municipal Code, Section 115-19, by proposing a low density single-family residential development, which will protect water resources, water sheds and scenic views; that the project is located within Investment Level 4 according to the State Strategies for State Policies and Spending Map; that Chapter IV of the County Code explains the State Strategies for State Policies and Spending Map classifies land areas as Investment Levels 1, 2, 3 or 4; that the Investment Levels verify the State's policies and priorities for expenditure of State funds on infrastructure; that the plan states, the State Strategies for State Policies and Spending Map are not parcel based and should not be used as a land use plan; that the project complies with the Comprehensive Plan and the Zoning Code, which is a requirement for any land development; that the project is consistent with the Comprehensive Plan and Future Land Use Map; that Section 4.4.2 of the Comprehensive Plan discusses the structure of the Future Land Use Map; that it explains Sussex County is divided into growth areas and rural areas; that the subject property is located within a low density, rural area according to the Code; that as of 2018 all the lands designated in the Comprehensive Plan as AR-1 are considered low density; that this includes the subject parcel, permitting single-family detached dwellings, with a permitted density of two units per acre on lots where a cluster style, like the proposed project, is proposed; that the project complies with Chapter 115-25(E) of the AR-1 District design requirements for cluster development; that the project complies with the Community Design section for the reasons stated and submitted into the record; that only single-family detached homes are proposed within the cluster subdivision in compliance with the requirement that all housing types in the low density area be limited to single-family detached homes; that a 50-ft. forested buffer is provided to adjacent property in excess of the County Code requirement; that the Applicant is seeking a waiver to the buffer requirement

between the existing original subdivision, The Woods at Burton Pond, as well as the residual lands; that this waiver to the buffer will promote a seamless transition between the existing community and the proposed 19 lots; the 50-ft. buffer will wrap around the perimeter of the proposed project; that the proposed homes within The Woods at Burton Pond are more than 50-ft. from the perimeter of the site; that no lots have access to State maintained roads; that no proposed lots are located within wetland areas; that the proposed community will be served by central water and wastewater systems; that Tidewater Utilities will provide central water; that Artesian will provide wastewater services; that the project complies with the requirements of Chapter 115-25(F); that the Applicant submitted a sketch plan for a cluster development on June 24, 2021, that the proposed open space does meet the definition of acceptable open space per the County Code; that the open space provides 9.72-acres in excess of the required 4.5-acres; that the subdivision will be located next to Angola Landfill; that the general notes of the original subdivision plan noted the property identified within the record plan as residual lands, which is the property of the subject Application, are located within the Sussex County Landfill No. 3 Groundwater Management Zone Area; that due to this the Applicant has proffered with the submitted proposed Conditions of Approval, to prohibit any activity and all forms of subsurface depressurization, including basement construction and groundwater extraction, which could affect any hydrogeological groundwater flow or lower the water table for adjacent properties; that this condition is consistent with the general notes of the original subdivisions record plan; that the Applicant has also proffered within the proposed Conditions that no irrigation wells will be permitted; that the proposed lots are configured outside of all wetlands; that the project proposes 50-ft. landscape buffers from 3.98-acres of wetlands located on the property; that stormwater will be handled on site and will meet the current State of Delaware regulations; that tree removal will be limited to what is necessary to construct the project; that the project does preserve scenic views by limiting back to back lots and providing gaps between lots; that the land plan preserves natural facilities, including wetlands and proposes sidewalks on both sides of the street; that the proposed development does comply with the Chapter 99-9C requirements; that the proposed subdivision is an extension of the existing subdivision, although being treated as a new subdivision; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape, as well as interconnectivity with the original subdivision; that there will be a minimal use of wetlands with appropriate buffers provided; that no lots will be proposed on any wetlands; that there are no known areas which required historic preservation on the site; that this is confirmed within the Assessment of Cultural Resource Potential, prepared by Mr. Otter, located in Exhibit G; that the plan preserves large tracts of open space, which total 64% of the site; that this equals two times the required amount for open space, subject to final engineering approval; that there will be a minimization to the removal of trees, vegetation, soil and and grade changes of the site; that there will be screening of objectionable features from neighboring properties and roadways; that a 50-ft. landscape buffer will be provided; that water will be provided by Tidewater Utilities; that Artesian will provide for wastewater services; that all runoff will be captured using best management practices and best available technology; that all stormwater treatment and discharge facilities will be installed in accordance with the State of Delaware and Sussex County Conservation District standards; that the project proposes a 48-hr. wet retention pond, which is shown on the plan; that the plan accounts for safe vehicular and pedestrian movement within the site with two adjacent ways; that the entrance to the community was designed at the time the original subdivision was constructed; that the entrance was constructed pursuant to DelDOT standards; that it is anticipated that the proposed subdivision will cause current property values to remain the same, if not increase in surrounding areas; that with the 50-ft. landscape buffer, and cluster design, the proposed subdivision will have a limited affect on adjacent properties; that the community is not expected to have an adverse effect on schools, public buildings and community facilities; that the proposed single-family homes will likely attract retirees and second home residences; that the site is

located within the Cape Henlopen School District, who has been responding to the growth of the area; that the original subdivision completed all required area roadway and public transportation improvements; that the project is compatible with other land uses, as there are other similar subdivisions surrounding the site; that this therefore makes the proposed project consistent in design, density, home style and land use; that there will be a 50-ft. buffer from all wetlands; that there will be an efficient stormwater management facility which acts as amenity; that runoff will be treated for water quality and quantity prior to discharge; that for all the reasons stated, the proposed cluster development is superior in design to a standard subdivision as the project proposes significant amount of open space, landscape and wetland buffers, to protect and avoid development within the environmental sensitive areas on site and a stormwater management system which will act as an amenity, as well as a natural companion to features on site.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is the Principal and professional engineer with Davis, Bowen and Friedel, Inc.; that preliminary approval was granted for the original subdivision in 2009 for 167 lots; that final approval consisted of 165 lots; that the subject residual land, previously referred to as "Parcel B" consisted of 15 acres; that, as noted, it is located adjacent to the closed Angola Landfill No. 3; that the residual area went through several negotiating periods with the Sussex County Engineering Department; that Sussex County was considering purchasing the residual land to act as a buffer; that after a year and a half of negotiations, it was determined Sussex County would not purchase the land for additional buffer; that the strip of residual land would be reserved, allowing the land to be developed subject to additional testing; that a note was placed on the original record plan, specifically under note No. 22; that the note states the land could be developed further subject to the four provided conditions were met; that the required conditions were, the installment of two water-monitoring and two gas-monitoring wells, to be monitored for three years; that after three years a report may be submitted to Sussex County Engineering Department, proving there were no methane intrusion or groundwater pulling of the like; that if these requirements were met, it would be permitted to subdivide the parcel; that Environmental Alliance was hired by the developer to complete the required monitoring and provide a Hydrogeology Report; that the Hydrogeology Report was submitted to the Sussex County Engineering Department; that the County Engineer concluded with the report, which is noted in Appendix I of the Exhibit Booklet, additional information regarding requirements during construction only; that the developer has satisfied the requirements of Note No. 22 of the original record plan; that the property is located within the 100-Year Flood Plain; that within the Chapel Branch is where the floodplain is located; that this floodplain area is contained to the wetland area and does not encroach into the developable portion of land; that no lot are located within the floodplain; that the wetlands were delineated near Chapel Branch; that there is an isolated pocket of wetlands to the right; that by providing a 50-ft. buffer from the wetlands the proposed development does not encroach onto the wetlands; that the project is not located within a Wellhead Protection Area or Excellent Recharge Area thus meeting the requirements of Chapter 89; that the developer did improve along the frontage of Conleys Chapel Rd.; that the improvements consisted of two 11-ft. travel lanes, two five-foot shoulders, a shared-use path along the frontage, a protected left turn lane and right turn lane were installed, which created a four-legged intersection with the entrance to Beaver Dam Acres; that they do not anticipate any additional approvals to be required for the proposed 19-lots; that the original subdivision plan had provided two stubs in preparation for the subject Application; that they proposed to extend Artesian Avenue to connect to the two stub streets for the additional 19 lots; that the extension of Wellspring Ave will be designed with a pavement width of 24-ft.; that there will be sidewalks located on both sides of the street; that the streets will meet or exceed the Sussex County standards and specifications; that the expansion will need eight acres for the construction the pond, road

and lots; that the plan does preserve about seven acres of woodland within the non-developed portion of the property; that the expansion will utilize the active amenities, located within the original subdivision; that the active amenities are centrally located within the original community; that the existing amenities were designed to account for the expansion of the proposed 19 lots; that the buffer waiver request is for the common boundary line, allowing for a harmonious transition between the subdivisions; that although the subdivision is located within the low density, Level 4 Investment area, it is located within the Henlopen Transportation Improvement District (TID); that this requires the project to pay the fee for the Henlopen TID; that the developer will be participating in the TID; that the developer will pay the required fees as part of the subdivision plan approval and DeIDOT approval process.

Ms. Stevenson requested there be something in writing for residents to sign, providing awareness of the lots being located adjacent to the Angola landfill.

Mr. Robertson questioned if the 19-lots will be governed by the Homeowners Association and utilize the amenities of the existing Woods at Burton Bond subdivision.

Ms. Peet stated that a lot of the existing subdivision is under the developer's control; that the intention is the current Homeowners Association will also govern the additional 19 lots and the extension subdivision will also participate and utilize the existing amenities.

The Commission found Mr. Frank Geno spoke in opposition to the Application; that he is the Ex-HOA President of Holly Oak Subdivision; that in 2007 he sent a letter to Mr. Mike Izzo concerning the existing Woods at Burton Pond and the water flow which currently exist from a blueline stream; that the stream stretches across Rt. 23, comes back through and runs through the Holly Oak development; that the concern at the time was the construction of the subdivision creating a lot of blacktop surface area; that this created fear of additional water runoff to the Holly Oak area; that Holly Oak currently has water and drainage issues; that they are concerned if the developer is removing more trees, it will result in more water runoff; that he understands the developer has proposed retention ponds; that the trees proposed to be removed, are the same trees which are currently blocking the water; that the dump does not have a lining to it; that they have had a 100-Year Flood in the area already; that at the time Dorman Rd. was flooded and he questions where all of the water will go.

The Commission found that Ms. Gail Geno spoke in opposition to the Application; that she is the current President of Holly Oak Homeowners Association; that when there is a heavy rain, the runoff runs to the Angola Landfill No. 3, travels through a culvert under Dorman Rd. into Holly Oak; that there is no place for the water runoff to go, other than to flood the back of the Holly Oak development; that this issue was spelled out in a letter written to Mr. Mark Izzo in 2007; that the issues and concerns stated in the letter have now come to fruition; that she believes this flooding issue comes for the existing Woods at Burton Pond subdivision and the addition of the 19 lots will make the existing issue worse; that DNREC has been called to Holly Oak a number of times; that Holly Oak residents are not allowed to touch the blueline stream, as it is federally regulated; that there have been two homes which were previously flooded; that she has lived in Holly Oak for 19 years; that there was not a flooding issue prior to the construction of Woods at Burton Pond; that since the construction of Woods at Burton Pond there has been a lot of flooding; that she had submitted pictures to Mr. Smith's and Mr. Rieley's office regarding the flooding; that the road and the back of the Holly Oak development have previously been under water; that they previously had a builder bring in submersible pumps to disperse the water; that there is a culvert under Dorman Rd. which backs up to the Holly Oak development; that the water has no where else to run except into the Holly Oak Development; that the blueline stream heads out onto the other side of Dorman Rd. where another culvert is located and there have been many attempts to replace the culvert.

Ms. Wingate questioned who placed the pipes Ms. Geno is referring to and if DNREC is planning to take any corrective action.

Chairman Wheatley stated the flooding and drainage issues are an issue for Sussex Conservation District and questioned if a person from DNREC told her that the water from Woods of Burton Pond flowed onto the properties of Holly Oak development due to something being improperly constructed.

Ms. Geno stated DNREC placed the pipes; that DNREC had informed her the pipe placement had been improperly done, agreeing there is nowhere for the water to run; that once the water heads under Dorman Rd. it will go onto the Holly Oak development; that she was told the DNREC engineers in Dover were the people to handle the issue; that the people of the development need help and that she does not have the person's name, however, she was told by an employee of DNREC that the water from Woods at Burton Pond was flowing onto the properties of Holly Oak development due to the piping not being constructed properly.

Mr. Lardner stated the blue line stream is the outfall for a portion of the project; that the water for the proposed subdivision will be captured in a closed drainage system; that there are catch basins that have preliminarily been placed; that there are multiple swales in place to capture water; that all runoff will be conveyed to a stormwater management pond; that the stormwater management pond is designed to meet the current sediment stormwater regulations; that the stormwater management pond will discharge into Chapel Branch; that Chapel Branch will discharge into Burton's Pond; that the runoff will not go into Holly Oak subdivision and the water runoff from the subject Application will not run where the rest of the current runoff is going.

Mr. Hopkins questioned if Mr. Lardner was insinuating when the site work is completed the runoff will not run onto Holly Oak; that the runoff could have possibly been running onto Holly Oak before they moved on-site; that he questioned if Mr. Lardner has an opinion to what Ms. Geno was referring to; that he feels many people do not understand that there can be water runoff prior to the design; that at times, the drainage issues are corrected during the construction of a subdivision; that he wishes there could be a running history of drainage issues and/or remedies after the construction of a subdivision; that he questioned if the issue was an outfall problem, due to the water being unable to flow fast enough with heavy rains and questioned if any topography studies were done to give any indication if the issue was solely from the pipes.

Ms. Wingate questioned if the pipe, Ms. Geno is referring to, belongs to Sussex Conservation District.

Mr. Lardner stated no that generally a wooded parcel does not have runoff; that he has studied the drainage pattern for the area intently; that the drainage begins north of Conleys Chapel Rd.; that there is a pipe crossing; that there is drainage north of Conleys Chapel Rd. which comes across Conleys Chapel Rd.; that the drainage does run through a nearby ditch and onto Holly Oak as Ms. Geno described; that they did evaluations of some of the culverts, ditches and crossings and parts of Holly Oak as part of their requirements for Sussex Conservation District approval; that they were required to demonstrate that the flow rate stayed the same or less than the predevelopment flow rate and that the water service elevation at the pipe crossings stayed the same or less than the original design; that they did not increase flow or flooding depth or ditch depth of the water within the system; that there are two wet ponds which discharge into the ditch; that predominantly, the rest of The Woods at Burton Pond discharges into Chapel Branch and onto Burton's Pond; that Ms. Geno is correct, stating the area does flood; that their study analysis did show evidence of existing flooding prior to the construction of the project; that flooding was a concern of Sussex Conservation District (SCD); that one of the proposed Conditions of Approval states they are not permitted to exacerbate existing conditions; that they have demonstrated

this requirement through their calculated approval process; that the pipes of Holly Oak are undersized; that he does not doubt there is flooding, but the condition should not have worsened; that until conditions are improved to increase the flow, there will not be a decrease in the existing flooding; that these improvements would be regulated through DNREC and/or Sussex Conservation District; that the Drainage Program has received a lot of funding and are performing some drainage improvements; that Mr. Jim Elliott would be the point of contact at Sussex Conservation District for drainage issues; that the pipe is a private pipe; that it is a blue-line stream; that there are requirements on how the culvert can be approved; that Sussex Conservation District is the starting point for any improvements; that the issue comes from ditches not being maintained, the pipes being slightly undersized and a combination of different factors; that he has seen this issue within a lot of similar communities; that he can promise, based off the performed studies, they should not have exacerbated the flooding situation and they did not perform any topography studies within the Holly Oak subdivision.

Chairman Wheatley thanked Mr. Lardner for the thorough explanation of the drainage issues on the Holly Oak property; that the explanation was not something he was required to provide; that he questioned if the stormwater management provisions for the subject Application, will contain all the water runoff and outfall to a completely different location and if Sussex Conservation District has reviewed the plan.

Mr. Lardner stated the proposed project's stormwater management will contain all runoff and will not discharge onto Holly Oak; that Sussex Conservation District has not yet seen the plan; that if the project were to be approved by the Commission, they would finish the design and submit the plans to Sussex Conservation District for review and final approval.

The Commission found that Mr. Michael Needham spoke in opposition to the Application; that he is part of the Homeowners Association Board for Holly Oak; that he questioned if the engineers calculated the impervious increase as part of the included calculations; that he asked to confirm if Mr. Lardner had insinuated no runoff from the proposed project would outfall into Chapel Branch; that if the outfall is going to Chapel Branch the runoff would go onto Holly Oak.

Chairman Wheatley stated the impervious surface increase is part of the provided calculations; that he did not believe Mr. Lardner stated there would be no outfall to Chapel Branch and the runoff is being directed away from Holly Oak and outfalling into Burton's Pond.

Mr. Lardner stated they have proposed a stormwater management pond; that the pond will discharge to Chapel Branch; that Chapel Branch has a flow to Burton's Pond and they are not discharging runoff through Holly Oak or Dorman Rd.

Chairman Wheatley stated the Commission often hears concerns of flooding and drainage issues; that the Commission is aware there are current issues that do require attention and he suggests anyone with a concern contact Sussex Conservation District.

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

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

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

In relation to Application 2021-22 The Woods at Burton's Pond Extended. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Chairman Wheatley abstained from the next Application. Ms. Stevenson was appointed Vice-Chair for the Application 2021-26 Harper's Glen. Mr. Wheatley left Council Chambers.

**2021-26 Harper's Glen** - A cluster subdivision to divide 29.39 acres +/- into thirty-three (33) single family lots to be located on certain parcels of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the north side of Milton Ellendale Highway (Rt. 16), approximately 0.17 mile east of the intersection of Gravel Hill Road (Rt. 30) and Isaacs Road (Rt. 30). Tax Parcel: 235-14.00-61.00 & 61.06. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Subdivision Plan, staff review letter, and the Applicant's response to the staff review; Technical Advisory Committee (TAC) Review Comments, a letter from Sussex County Engineering Department Utility Planning Division and zero comments in support or opposition.

The Commission found that Mr. Steven Fortunato spoke on behalf of the Application; that he works for Bohler as the civil engineer for the project; that also present was Mr. Stan Aldridge with Insight Land Company who is representing the developer; that the Application proposes a 33-lot subdivision; that the proposed location is west of the Town of Milton; that the property fronts on two locations being Rt. 16 and Rt. 30; that they propose one entrance from Rt. 16, currently located on a separate parcel, which they propose to consolidate with the main farm parcel; that they also propose to subdivide congruently the other two frontage parcels as part of the Application; that the two frontage parcels will not be included into the proposed subdivision; that the two frontage parcels will not be part of the Homeowners Association documents, road maintenance or any proposed improvements as part of the project; that the project consists of one looped road; that all lots front the looped road internally; that no lots front Rt. 16; that an open drainage system is proposed; that they are not proposing curbs and storm drains; that water runoff will be collected via swales and will drain to one proposed infiltration pond; that the infiltration pond is located at an existing low area; that all proposed lots are to have onsite well and septic; that the project is a cluster subdivision; that the minimum lot size is a half-acre; that the proposed density remains the same, which does not increase the allowed density of 1.33 lots per acre; that they are proposing 33-lots rather than the maximum of 36-lots permitted; that they have proposed an internal sidewalk, along the internal side of the looped road; that in speaking with Sussex County Engineering it was recommended there be a five foot extension of the pavement, as opposed to separating the road from the sidewalk, having the sidewalk on the other side of the swale; the Sussex County Engineering viewed the pavement extension as a safer and easier to maintain option; that by extending the pavement the road and sidewalk would be able to be plowed; that there is a 22-ft. road section; that proposed is to extend five-foot of pavement on one side of the centerline to allow for walking; that this proposal does meet the requirement for a sidewalk; that it is not required to be a separate concrete surface; that this was proposed at the recommendation of Sussex County Engineering Department (SCED); that with the swale configuration, it did not make sense to have the swale located 15-ft. to 20-ft. away from the road; that the entrance has been designed and currently under review with DeIDOT; that they did have a pre-application meeting with DeIDOT; that there were no major issues mentioned; that the project generates fairly low traffic; that there was no Traffic Impact Study (TIS) required; that there are no potential drainage issues at the frontage; that one right turn lane is proposed; that there are no negative traffic impacts anticipated; that the project is in compliance with the Code and Bulk regulations of Chapter 115 and Chapter 99-9C of the Comprehensive Plan; that as part of a cluster subdivision, a walking trail is

required; that they did submit a waiver of the required walking trail; that walking trails are intended for central sewer and water cluster subdivisions, where there is a high density of lots in one place, with open space located within a residual area; that the intent of a walking trail is to apply active recreation to open space; that cluster subdivisions with larger lots for septic will create smaller portions of open space; that currently the only opportunity for a walking trail, would be to place the walking trail behind all proposed lots; that it was agreed upon from the developer, the engineer and from the planning perspective that people should not be walking behind the homes; that due to the larger lots, it will be dark and there will be no street lighting extending to the back of the lots; that there is a 30-ft. buffer from all agriculture; that there is a 20-ft. forested buffer from adjacent residential areas; that there is a 50-ft. structure setback from adjacent agricultural areas; that the project meets the open space requirements; that the site does not contain wetlands; that the site is not impacted by any flood zones; that they do request preliminary approval from the Planning & Zoning Commission for the proposed plan; that should preliminary approval be granted, they will proceed with the remaining technical agency approvals and submit them back to the Planning & Zoning for final approval.

Mr. Hopkins questioned how wide the streets are proposed to be; that he stated the site is .17-mile off Rt. 30; that he believed there is an Artesian force main located down Rt. 30 and he would hate to see proposed septic systems if there is a force main located 150-yards away.

Mr. Mears questioned if there would be any lines placed to designate the walking area on the extended paving; that he stated if the sidewalk waiver request is granted, line placement on the extended pavement would be a requirement to provide some designation for pedestrians and drivers; that he requested confirmation that the lots located along the road would be separate from the subdivision and would be sold off individually.

Ms. Wingate questioned if the buffer, from the properties along the highway to the development, was proposed to be 20-ft.

Ms. Stevenson questioned if the developer will be selling lots or home packages and what would happen to the trees located within the existing forested areas.

Mr. Chase Phillips questioned the size of the proposed lots.

Mr. Stan Aldridge, with Insight Land Company, stated with the lots being on septic, they cannot confirm how much of the lot will be necessary to be cleared to satisfy the septic requirements at this time; that they are showing the lot to be cleared up to the rear lot line in allow septic and well to be installed and any trees which are not required to be removed for septic and well installment would remain.

Mr. Fortunato stated the proposed streets are 22-ft. with 11-ft. lanes for driving; that they propose to extend the road an additional five feet on one side to meet the sidewalk plan; that the County Code does not require the placement of lines on the extended pavement; that they have internally discussed the possibility of line placement; that it currently is the developer's and engineer's opinions that line placement would be a benefit for a safety standpoint and he cannot state what the line would look like, but they are discussing adding the road lining into the design; that he did speak with Ms. Lauren DeVore at a pre-application meeting regarding the two individual lots; that they are attempting to "hit two birds with one stone;" that they request to consolidate the entrance parcel with the subdivision parcel and separate the two individual frontage parcels; that the two frontage parcels will be sold separately, and sold as is; that the two frontage parcels will not be considered part of the subdivision development; that the buffer from the development to the properties along the highway is proposed to be 20-ft.; that there is a planned Artesian force main down Rt. 30; that they have been in contact with Artesian, which



occurred a few weeks ago; that the planned force main with Artesian is in the very early stages and no construction has begun; that they are open to conversations with Artesian as central water being an option; that the Applicant does prefer to move forward under the proposed septic lots as an option; that if they moved forward for central water, there would be a lot of planning, re-engineering and financial analysis required if the plan did not work out; that they prefer to move forward with the proposed plan; that if they receive preliminary approval, they could make the evaluation for central water and if they chose not to connect, they could still move forward with the approved septic lots; that Insight does not intend to disturb any trees not located within proposed lots, or not needed for the construction of the project; that they propose to leave the open space areas forested and the lots are a minimum of .5-acre.

The Commission found that Mr. Robin Davis spoke in opposition to the Application; that he lives adjacent to the proposed development; that the proposed entrance to the subdivision will be located to the left of his property; that there will be a subdivision lot located to the rear of his property; that he and his wife have owned their property for over 30 years; that they would like for the development not to be approved, as they enjoy the open area, however, they do understand the right to develop; that he does have some concern if the subdivision is approved as proposed; that the proposed entrance is to be installed on the existing parcel, 235-14.00-61.06; that the property is currently a separate parcel from the 235-14.00-61.00; that this parcel is located directly adjacent to the left of their property; that it appears on the revised submitted plans, a right turn lane is required for entering the subdivision from the east, Rt. 16; that they assumed the right turn lane is a DelDOT requirement; that the right turn lane proposes a major concern, as the proposed right turn lane will be in direct conflict with their existing driveway; that their existing driveway is located on the left of their property and can be seen on the submitted plans; that their driveway would be situated in the middle of the right turn lane as it is currently proposed; that this will cause safety issues for anyone entering or exiting their driveway and for the postal service, who will be required to stop in the middle of the drive isle when delivering their mail; that the plan also reflects the requirement for additional paving, which will be approximately two to three feet in width to be installed in the right of way area in front of their property to accommodate the proposed turn lane; that accessibility to their property and mailbox for delivery purposes would be disrupted during the preparation and construction phases of the turn lane; that these issues would need to be address if approved as currently shown on the plan; that they request the Planning & Zoning Commission require an alternative location for the entrance of the subdivision; that there are two existing areas, belonging to the larger parcel, which are currently accessible to the parcel from Rt. 16; that the Applicant could use one of these locations to accommodate the proposed turn lane, while causing no existing driveway access or mail delivery issues; that one of these areas has 176-ft. of road frontage, noted as Off-Site Parcel A, on the plan; that the other area has 202-ft. of road frontage, noted as Off-Site Parcel B, on the plan; that either of these areas would be better suited for the turn lane due to the adjacent properties directly to the right; that these are listed as Parcels 235-14.00-61.05 and 235-14.00-61.03; that both parcels have their existing driveways and mailboxes located to the right side of their properties; that moving the entrance would allow for the installation of the turn lane, which would be located completely out of the property driveway areas, which would lessen safety access concerns; that with this disruption issues during the preparation and construction phase would potentially be resolved; that he understands this would require changes to the design, but could be completed since the Applicant is in the very early stages of the process; that the current plans are noted for concept purposes only; that they request the Commission to require landscaping and buffering to shield adjacent property owners from vehicles entering and exiting the subdivision during the evening hours; that he did not see any information submitted which referenced this; that the entrance is proposed on a parcel which is only 162-ft. wide, being the smallest of all the areas; that he questioned if light poles will be installed along

the access area to the development; that he did not see any plans submitted referencing this; that if there is to be any lighting, they would request the Commission to require the lighting be shielded downward, screened and directed away from neighboring properties; that he saw the two areas showing signage for the subdivision, but he questioned what the design would look like; that he assumed the existing regulations would limit the signage; that he would like to see a sign at a low height; that the signage lighting is a concern; that there is a 20-ft. residential buffer noted on the submitted plans, but no other details to what plantings the buffer would consist of; that they would request the Commission require the Applicant to install additional evergreen trees above and beyond the forested landscape buffer requirement and/or a six foot high fence opaque fence, which would be properly maintained by the developer or the Homeowners Association; that this would ensure privacy for the existing property owners abutting the proposed subdivision and he mentioned the public hearing sign placed on the property was knocked over.

Mr. Whitehouse stated the County Code requires a minimum of 15 trees per every 100-ft.; that this will consist of a double staggered row of trees; that the Code requires a mixture of evergreen and deciduous species with a certain percentage of deciduous and evergreen species, and all requirements must be shown on the Landscape Plan as it is required under the Subdivision Code.

Ms. Stevenson stated that when the Applicant submits the Final Site Plan it will be required to show where the plantings will go.

Ms. Wingate questioned if the proposed plans encroached onto the Davis' property and entryway, and she stated she believes this issue to be a safety concern.

Mr. Robertson questioned if the placement of the subdivision entrance was a developer-driven decision or a DelDOT-driven decision.

Mr. Fortunato stated the plans do encroach on the Davis' entryway; that he has mentioned this several times to DelDOT; that he requested DelDOT to provide alternate design options for the turn lane; that DelDOT responded this issue happens frequently; that there are several cases where right turn lanes and improvements impact driveways; that there is a standard DelDOT tie-in where one comes in at a 45-degree for five feet; that Mr. Davis is correct that the existing driveway would fall within their proposed right turn lane; that DelDOT did not view this as a safety concern; that the proposed entrance was discussed and there was no objection from DelDOT regarding the proposed location; that the other locations would require the developer to demolish existing homes and structures; that the developer would lose the land value if the entrance were placed in either of the other locations; that if they did not propose the entrance on the currently proposed property, he does not believe they could propose the lot with a new entrance on Rt. 16; that DelDOT will not allow one lot of a subdivision to have its own access and for consolidation and consistency purposes, the currently proposed location made sense because it was already open.

Ms. Wingate stated she believes they could still achieve the same type of access if they proposed the entrance access on Parcel A; that she questioned if it was possible the stormwater management pond could be relocated to the open space.

Ms. Stevenson questioned what will be done to protect adjacent properties' dark skies.

Mr. Hopkins stated everyone driving from Milton to Greenwood by Rt. 16, would be required to get off Rt. 16 to access the right turn lane; that he questioned if there was a right of way or if they would be required to purchase land for a right of way; that he questioned if vehicles would be completely located

off Rt. 16 when accessing the right turn lane and questioned what the impact would be to Mr. Davis' existing driveway.

Mr. Fortunato stated he did review that design; that he believes access through Parcel A would cause a net reduction of lots, because they are currently able to fit lots fronting a portion of the access road from the loop, at the entrance of the property; that those lots were able to be achieved due to entrance distance away from the property line; that lining an access from Parcel A does not allow that ability; that it would cause a loss of efficiency and a couple of lots; that the stormwater management pond is proposed in an existing low area; that the low area collects drainage from a fairly large area; that they have proposed to take testing down to a grade infiltrating area, to create more water going into the ground, less water ponding up and discharging onto adjacent property; that due to this the location of the stormwater pond is fairly concrete; that drainage flows away from the road toward the low area; that lighting plans are typically constructed with the developer and the lighting provider; that he could not recall the lighting provider for the project at that time; that he does not believe addressing lighting concerns will be an issue; that the right turn lane would require a two foot addition of pavement to construct the regulatory right turn lane; that they would not be required to purchase land to construct this; that everything could be constructed within the existing right of way; that vehicles would be located completely off Rt. 16 when accessing the right turn lane; that he does not believe the right turn lane will impact Mr. Davis' property any more or less than any other property; that there will be additional traffic heading to the subdivision, which every project generates; that regardless of the whatever entrance is proposed, the additional traffic is going to travel in front of any property adjacent to the project; that the traffic from the neighboring property will not be able to pull out when the traffic is heading to the right turn lane; that this will be regardless if the vehicle is located on Rt. 16, in the right turn lane or whether the driveway is located within the right turn lane or not; that the oncoming vehicle will be passing by the driveway and the other vehicle would not be allowed to pull out of the driveway in either situation; that this was the analysis and talk they had with DelDOT; that a TIS was not required, but they do have other traffic operation analysis which look more closely at the functionality of intersections; that if there was a project located a mile down the road, which generated 1,000 additional vehicles, all of the additional vehicles would drive pass and affect the movement from all existing driveways; that this is an impact which is incomed with any project that generates traffic.

The Commission found that Ms. Teresa Pepper spoke in opposition to the Application; that she was present on behalf of her mother Ms. Janice Pepper who owns property adjacent to the west side of the project; that she questioned why an entrance way would not be feasible on the middle lot, referred to as Offsite Parcel B; that she questioned if there is a plan for fencing or buffering around the perimeter of the subdivision; that she questioned if the 20-ft buffer area could be open land; that she questioned if by having the 20-ft. buffer, would there not be a permanent fence around the subdivision and she is opposed to the entrance being placed on Offsite Parcel A, as it is directly adjacent to her mother's property, due to her mother being elderly she does not like the idea of additional traffic being right next to her.

Ms. Stevenson stated there is a requirement that the subdivision provides a buffer from adjacent properties and currently the plan proposes a 20-ft. vegetated buffer; that the County Code requires no less than 15 trees per 100-ft. for a vegetated buffer and the Code does not require the subdivision to have a fence around the perimeter.

Mr. Fortunato stated with the entrance being on either Offsite Parcel A or Offsite Parcel B, the situations are similar; that on Offsite Parcel B there would be a significant demolition cost associated with clearing everything currently on the site; that he would assume the site probably has old septic tanks and other things which may prohibit the entrance being placed; that they would have additional demolition cost

and they would lose the value of the property as a lot; that they would not be able to replace the lots lost if the entrance would be proposed through Offsite Parcel A and B; that they would lose density and the ability to sell off Offsite Parcel B while gaining the extra cost for demolition; that the existing parcel A, cannot be sold as a lot as there is no value, and from a developing standpoint, Parcel A is the most efficient option for an entrance.

Ms. Wingate questioned why they felt they would have to remove the first three lots on the right with the relocation of the entrance; that if the entrance came in through the middle lot, the currently proposed road could be left as is and made a dead-end road and she believes this would only cause the loss of one lot.

Mr. Mears questioned why the lot, originally proposed for the entrance, could not be sold if the entrance is relocated.

Ms. Stevenson questioned the size of the lot the entrance is currently proposed on and stated she believed they could make the lot, where the entrance is currently proposed, a lot within the subdivision should they relocate the entrance.

Mr. Fortunato stated they would lose Lot 21 and they would have to explore if they could get approved for a Code Approved turn around at the dead-end road; that this would require review and approval from the Fire Marshal Office; that in that situation, they would lose Lot 21, the ability to sell Offsite Parcel B and incur the cost of demolition to Offsite Parcel B; that if the entrance was relocated to Offsite Parcel B, the other lot could only be sold as an open lot; that selling Offsite Parcel B as proposed, they would be selling a fully functioning home and driveway; that the value of Offsite Parcel B, as proposed, is several times more than an open lot; that the lot currently proposed for the entrance is .83-acres; that the proposed forested buffer will be a mixture of deciduous and evergreen trees; that the developer will have no issue placing all evergreens in areas adjacent to existing residential areas; that this would provide a double layer of evergreens in those areas; that they would take a few years to grow, but the evergreens would not be able to be seen through; that with the proposed larger lots, the homes will be located 100-ft. or more from the property lines; that he believes they are required to have 100-ft. of road frontage to allow the lot, currently proposed for the entrance, to be located within the subdivision; that he would have to check to see if they could place a dead end or cul-de-sac; that having frontage on Rt. 16 for the parcel, currently proposed for the entrance, would require a conversation with DelDOT; that it is not permitted for a lot, as part of the subdivision, to front Rt. 16; that it would be required for the lot to front the internal roadway and Offsite Parcel A and B currently have existing entranceways, which they do not propose to change.

Mr. Robertson stated the Commission can place a condition on the location of the entranceway; that this was his reasoning behind asking if the location of the entranceway was required by DelDOT and it may be the circumstance where the parcel is considered residual lands providing a bit more open space.

Mr. Phillips stated the Planning & Zoning office is reviewing an active Site Plan across the street from the subject property; that the Jerry Ann McLamb Medical Pavilion is located directly across the roadway; that the Site Plan has not yet received final approval and he mentioned this for the Commission's consideration.

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

Upon there being no further questions, Vice-Chair Stevenson closed the public hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application 2021-26 Harper's Glen. Motion by Ms. Stevenson, to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0. Chairman Wheatley abstained.

Chairman Wheatley returned to Council Chambers.

**C/U 2290 Toback Development, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR CONTRACTOR FLEX SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD KILL HUNDRED, SUSSEX COUNTY, CONTAINING 7.12 ACRES, MORE OR LESS.** The property is lying on the west side of the intersection of Lewes Georgetown Highway (Route 9) and Prettyman Road (S.C.R. 254). 911 Address: N/A. Tax Parcel: 235-30.00-6.21 (portion of).

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Site Plan, Exhibit Booklet, Staff Analysis, the DelDOT Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division; a copy of Azalea Woods Traffic Impact Study, one mail return and one letter in support.

The Commission found that Mr. David Hutt, Esq. with Morris James, spoke on behalf of the Application; that he was representing the owner of the property, as well as the Applicant, Toback Development, LLC.; that also present was Mr. Matt Toback, the Principal of Toback Development, LLC and Mr. Carlton Savage, with Scaled Engineering; that the subject Application is for Contractor Flex Space; that Contractor Flex Space is a building, where there are multiple units for businesses, with an opportunity in the front of the building for the location of a business office, as well as a showroom; that at the rear of the unit there would be warehouse and storage type area; that this would allow a contractor to participate in a group of business, rather than purchasing land and erecting a building for space; that the unit has a proposed entry for people; that in the rear of the unit there is a garage door; that Mr. Toback is a builder in the area; that many of his trade partners are looking for a space of this proposed nature; that it would allow his trade partners to have a small business office, a showroom type area and a place for material storage; that what is proposed is not a new concept; that these types of arrangements exist throughout Sussex County; that a similar example of the proposed use would be the Harbeson Business Park, which is located further down Rt. 9; that within Harbeson Business Park is Rogers Graphics, Bath, Kitchen & Tile Company, and many other wholesale activities which are present for contactors; that within some of the units there is a small showroom area and office, located at the front for a person to stop by; that the property is slightly over seven acres; that the property is located at the intersection of Rt. 9 and Prettyman Rd.; that within the surrounding areas there is a mixture of commercial and residential uses; that across the street is Beaver Dam Estates; that further west on Rt. 9 is Deerwood; that there are other strip-lots located along Prettyman Rd. and Rt. 9; that DelDOT recently completed the widening of the Rt. 9 and Rt. 5 intersection and added additional turn lanes; that there is the new Royal Farms on the corner and the Harbeson Cemetery; that further east on Rt. 9 is Trails of Beaver Creek Residential Subdivision; that along Rt. 5 is the Meadows of Beaver Creek; that the property is zoned AR-1 (Agricultural Residential); that Bayhealth Medical Center, which is currently being constructed, is in vicinity of the site; that Dollar General is located across the street; that further west there is a series of properties zoned commercial; that Royal Farms, Allen Harim Plant, Lullaby Learning Center, Compass Point Associates, LLC, Beaver Dam Estates, Deer Wood, Hawthorne, the DelDOT maintenance yard, Besche Furniture and the new Weston Willows, are all within the surrounding area of the site; that the State Strategies Map designate the area as being in Investment Level 4; that the property is located with a low density area according to the Future Land Use Map; that this use is

consistent with the guidelines of permitted uses within the low density area, because it provides convenient areas for businesses, addressing the needs for homes and property owners within the immediate and surrounding areas; that the property is not located within a flood plain, as it is designated Flood Zone X unshaded; that according to the FEMA maps, there are no wetlands located on the site; that Artesian has the CPCN to provide water and sanitary sewer services to the property; that a Service Level Evaluation Request was submitted to DelDOT; that DelDOT responded stating the proposed project would have a minor impact on the area roadways; that DelDOT is permitting the Applicant to pay an area wide study fee in lieu of a Traffic Impact Study (TIS); that there was a TIS performed in 2019 for Azalea Woods, which DelDOT included within their response; that Rt. 9 is considered a principal arterial road; that the project proposes 26 units; that the project proposed 46,800 sq. ft. of contractor flex space between the two buildings; that the building, located along Rt. 9, is 27,000 sq. ft.; that the building to the rear is approximately 19,800 sq. ft.; that the proposed entrance is off Prettyman Rd.; that the entrance would come in past the first stormwater pond; that the stormwater pond is proposed to be an infiltration pond; that the entrance would provide access to the units; that the fronts of the units would have a office/showroom face of the business; that located to the rear of each unit there would be a garage door for larger deliveries; that the rear unit doors of the two buildings would face each other; that at the rear of the property there is another stormwater management pond, which is proposed to be a wet pond; that within the Exhibit Booklet there is an architectural rendering to show what is proposed; that the proposed building has more architectural than a standard pole building, with some ornamental and architectural features which are similar to many of the homes and businesses within the surrounding area; that the proposed use is consistent with the purpose of a Conditional Use, which is found in the Zoning Code; that Conditional Uses are appropriate when the use is of a public or a semi-public character, when the use is in character of the area, when the use promotes the convenience and welfare of area residents and will promote the general convenience, orderly growth and prosperity of Sussex County; that proposed Findings and Conditions were included within the submitted project booklet; that a proposed condition listed is that all work will be performed indoors; that this condition is similar to a C-2 (Medium Commercial) zoning classification; that another proposed condition is there will be no outside storage of materials; that the proposed hours of operation are 6:00 am until 7:00 pm, Monday through Friday and 7:00 am until 3:00 pm on Saturday, with no Sunday hours; that proposed are limited hours of operation which is consistent with a mixture of uses within the surrounding area; that proposed is a condition allowing for signage on each road frontage; that this would allow signage on the Rt. 9 frontage, as well as the Prettyman Rd. frontage.; that the maximum square footage of the proposed sign is 64 sq. ft.; that a proposed condition, unique to the subject Application is the request for wall signage for the businesses; that shown on the rendering, is signage placement above each entry door for individual businesses; that he took the proposed wall signage condition from the wall sign provision from the C-2 Zoning Code for Sussex County; that this provides an objective standard, which the Planning & Zoning office applies regularly when considering signage applications; that the thought process behind many of the proposed conditions were taken from the recently approved Change of Zone application for Executive Lawns; that Executive Lawns is located slightly west of the property; that Executive Lawns was first a Conditional Use and later returned for a Change of Zone request, which was approved; that the Executive Lawn application from was AR-1 to C-2 Zoning; that within that night's meeting, the Commission also approved C/Z 1951 for Shiloh Investments, LLC; that within the C-2 Zoning District, a 200 sq. ft. road sign is permitted; that they used the requirements of C-2 for proposed conditions, but only requested a 64 sq. ft. sign which is less than half of the permitted C-2 sign; that many of the concepts, principals and findings for Executive Lawn are applicable to the subject Application; that both properties are located near each other, both having frontage along Rt. 9; that the Application for Executive Lawns discussed performance of consumer sales and consumer services within the area, which applies equally to the proposed Conditional Use Application; that being located off Rt. 9 designates the property as being in an appropriate location to businesses which will support the area; that given the property's proximity to Rt. 5 and Rt. 9 the proposed use will provide support to

Harbeson, Georgetown, Milton, Lewes and other areas; that within Chapter 4 of the Comprehensive Plan, it states that business development should be largely confined to businesses addressing the needs of agricultural activities and homes; that Chapter 4 goes on to state that commercial uses within the residential areas should be limited in their location, size and hours of operation; that this is what makes the proposed Conditional Use appropriate for the proposed Application; that with the proposed conditions applied, the commercial uses could be performed, but limited to the size of the buildings, with limited hours of operation and the Applicant requested, with the imposed Conditions of Approval, the Commission recommend approval of the Conditional Use.

Ms. Stevenson requested confirmation that the Applicant is not requesting a Change of Zone, as C-2 (Medium Commercial) was referenced multiple times and she questioned if DelDOT approved the proposed entrance.

Mr. Hopkins questioned how many units were proposed, the total square footage, the dimensions of the proposed buildings; that he questioned how a contractor would be permitted onsite after hours or on a Sunday if needed and why they chose not to have hours on Sundays.

Mr. Mears questioned the storage and parking for large equipment, such as forklifts, after business hours.

Chairman Wheatley requested confirmation that the Application request is a space primarily used for storage, being a place for tools, equipment and materials, where contractors may visit in the mornings and evenings, to pick up, drop off or exchange of tools and equipment; that a main concern with flex space locations, is the fear the Applicant will place a mechanic shop in its place, having vehicles coming and going from the site all day long; that he requested confirmation that this is not the intent of the Applicant's request; that his main concern is a use which would create a steady stream of traffic; that he questioned if the Applicant would be opposed to a Condition prohibiting an automotive repair shop; that he questioned how the parking was calculated for the project; that he stated if the parking is not calculated for retail, a retail use is not what needs to be performed at the location and he has no opposition to the site being used seven days a week, as long as the site is being used as it is intended to be used.

Mr. Hutt stated the current Application request is for a Conditional Use, not a Change of Zone; that DelDOT has not yet approved the proposed entrance; that 26 units are proposed for the project; that the total square footage is 47,800 sq. ft.; that the first building is 27,000 sq. ft. and the second building is 19,800 sq. ft.; that he does not have the exact length and width of the proposed buildings; that all large equipment will be stored inside the units during afterhours; that the intent of the Application is for the storage of contractors equipment and materials; that although the project would act mostly as a staging area, the units would have an office and/or showroom display area located at the front of the units; that this would be similar to the Harbeson Business Park; that the parking shown on the plan is loading for a commercial business, with four noted spaces per unit; that this is not considered a retail use calculation; that the Applicant offer no operation on Sundays to limit activity on site seven days a week; that there is no intention to have a gate on the site at this time; that he believes if a contractor left their cell phone, they would be permitted to return to the site and he stated if the Commission would permit Sunday hours, they would request the same hours of operation for Sunday as they proposed for Saturday.

The Commission found that Ms. Becky Burton spoke in opposition to the Application; that she mostly had questions; that she does own property adjacent to the site; that she does have a family with small children, which is the reason for her concern; that she questioned how the conditions to usage and hours of operations are regulated; that she questioned if there is a regulation to what surrounds the retention ponds to protect people from the retention pond; that she is concerned about the additional traffic along

Prettyman Rd. as it is already a difficult task to get out and she states the Harbeson area and Rt. 9 are crazy when it comes to traffic.

Chairman Wheatley stated the Commission has the authority to place conditions on a Conditional Use; that he does not wish the stormwater management ponds to be an attractive nuisance or a danger; that the Commission will take the concern into consideration; that within Sussex County enforcement is primarily complaint-driven; that Sussex County does have a constable who investigates complaints; that the inspection staff and field staff do take note of problems; that there is no Planning & Zoning police who monitor for violations; that the Planning & Zoning Commission only recommends approval from a land-use perspective; that there are many other agencies who will have other requirements and DelDOT may require the Applicant to make certain improvements to the road, in an effort to relieve the current issues.

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

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

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to C/U 2290 Toback Development, LLC. Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

Chairman Wheatley stated he has granted permission per the Applicant's request to consolidate the presentations for the next three public hearings into one presentation.

**C/Z 1954 American Storage of Delaware, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.27 ACRES, MORE OR LESS.** The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 miles south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcel: 234-29.00-49.02 (portion of)

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Site Plan, the PLUS response, the DelDOT Service Level Evaluation Response, the Applicant's Exhibit Booklet, the Environmental Assessment, the Public Facility Evaluation Report, a letter from Sussex County Engineering Department Utility Planning Division and six mail returns.

**C/Z 1955 American Storage of Delaware, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS.** The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcels: 234-29.00-49.02 (portion of), 49.03 & 50.00.



Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Site Plan, the staff analysis, the DelDOT Service Level Evaluation Response, the PLUS comments, and six mail returns.

**C/U 2315 American Storage of Delaware, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY UNITS (140 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS.** The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcels: 234-29.00-49.02 (portion of), 49.03 & 50.00.

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's Site Plan, the staff analysis, the DelDOT Service Level Evaluation Response, the PLUS comments, a letter from Sussex County Engineering Department Utility Planning Division, and seven mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. with Baird Mandalas Brockstedt, LLC, spoke on behalf of the Applicant, American Storage of Delaware, LLC; that also present were Mr. Alexander Pires and Mr. Nate Graulich, representatives of the Applicant, Mr. Steven Spence, Co-Council, Mr. Carlton Savage, P.E., Scaled Engineering, Inc and Mr. Ed Launay, Senior Professional Wetland Scientist and Principal of Environmental Resources, Inc; that the Applicant is intending to construct a mixed-use development, involving multi-family residential housing and a commercial storage facility component with office space; that the site is located on the western side of Rt. 24 (John J. Williams Hwy.) and south of Yeshua Lane in Millsboro, Delaware; that the site is located within the Indian River Hundred; that together the site consists of 25.9-acres; although submitted are three separate applications, she has consolidated her presentation to address all three Applications with one presentation, with the understanding the Commission will vote on each Application separately; that C/Z 1954 requested a rezoning of an 8.27-acre portion of Tax Map 234-29.00-49.02, from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial); that this area is defined as Parcel 1 on the Preliminary Site Plan; that the rezoning was requested with the intention to develop 150,000 sq. ft. of commercial storage space, which would also include 1,200 sq. ft. of office space; that the commercial storage space would be for a three-story miniature warehouse; that currently the warehouse is proposed to have 838 units, but would be subject to change; that this use is permitted within the C-3 (Heavy Commercial) Zoning District; that this is the reasoning for the rezoning request; that C/Z 1955 requested rezoning for AR-1 (Agricultural Residential) to and MR (Medium-Density Residential) Zoning for the remaining, 17.63-acre portion of Tax Map: 234-29.00-49.02, as well as the entirety of parcels identified as 49.03 and 50.00; that this rezoning is requested with the intention of developing 140 multi-family units; that this area is defined as Parcel 2 on the Preliminary Site Plan; that related to that Application is C/U 2315 which requests a Conditional Use for the development of 140 multi-family units to be located on the parcels previously mentioned, which are proposed to be rezoned from AR-1 to MR; that she has submitted into the record proposed Conditions of Approval for C/U 2315 specifically; that the Applicant submitted into the record, the Land Use Application and Preliminary Site Plan, prepared by Scaled Engineering, Inc. for each request; that the Applicant submitted property and deed information concerning each parcel, confirming the owner and applicant as American Storage of Delaware, LLC; that the Applicant submitted legal descriptions for each parcel contained in Exhibit A; that a DelDOT Service Level Request and response are contained Exhibit B; that the Service Level Response confirms the proposed land use would considered to have a minor impact to the local area roadways; that the PLUS Application and PLUS

comments dated, March 23, 2021 are contained within Exhibit C; that a rendering of the proposed commercial use is contained in Exhibit D; that aerial maps of the site reflecting Zoning Districts, Conditional Uses, Future Land Use and Sewer Tier Overlays are included with Exhibit E; that an Environmental Assessment Report, prepared by Mr. Ed Launay and the Public Facility Evaluation Report, prepared by Scaled Engineering, Inc. are contained within Exhibit F; that both reports are required within the Coastal Area, in which the project is located; that the Coastal Area is designated as a growth area within Sussex County; that the Coastal Area generally includes the areas on the southeastern side of Sussex County within an area previously referred to as “Environmentally Sensitive Developing Area”; that mixed-use development, like the proposed Application, is permitted within the Coastal Area; that the Applicant’s plan is consistent with the Comprehensive Plan and complies with the Coastal Area requirements of Section 115-194.3 of the County Code; that the project is located within Investment Level 2 and Level 3 according to the Strategies of State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated in the near term; that Investment Level 3 reflects areas where growth is anticipated within a longer term; that as confirmed by the PLUS comments, the Office of State Planning and Coordination have no objection to the proposed rezoning and development provided it is compliant with the Comprehensive Plan and all applicable Codes and Ordinances; that nearby commercial and residential communities exist; that some of the nearby residential developments are Victorias Landing, River Breeze, Seabrook, The Peninsula and Peninsula Lakes; that The Peninsula and Peninsula Lakes are zoned as MR (Medium-Density Residential); that nearby commercial uses include the shopping center located at intersection of John J Williams Hwy. and Bay Farm Rd.; that passed the intersection of Rt. 24 and Rt. 23 are commercial uses such as a car wash, Giant grocery store, Arcadia Healthcare, and multiple fast-food establishments including Dunkin Donuts and McDonalds; that at the intersection of Rt. 24 and Mount Joy Rd. is Royal Farms, a church and a small strip mall, where the Liberty gas station is located, as well as a deli and tattoo parlor; that Section 115-194.3 of the Sussex County Code requires the Applicant’s submission of the Environmental Assessment and Public Facility Evaluation Report and sketch plan for the project, as it proposes 50 or more dwelling units and 75,000 sq. ft. or more of floor area for commercial use; that Scaled Engineering report, which also included Mr. Launay’s report, stated a combination of wet ponds, planted buffers and infiltration practices will be used for stormwater treatment; that stormwater will be discharged in accordance with the State of Delaware and Sussex Conservation District requirements; that water will be provided by Tidewater Utilities; that Tidewater Utilities did provide a Will Serve letter for the project, which is included within Exhibit F; that sewer service will be provided by Sussex County; that she just received that day, the Sewer Service Concept Evaluation, which she submitted into the record; that the Sewer Service Evaluation confirmed the project is located within Tier 2 with a need for 146 EDU’s, with 140 EDU’s for the multi-family component and three for the office component; that the increase in traffic and affect on surrounding roadways will be analyzed, reviewed and approved by DelDOT; that indicated within the PLUS comments, the improvements will generate less than 2,000 average daily trips and less than 200 peak hour vehicle trips; that this allows the developer to pay an area wide study fee in lieu of performing a Traffic Impact Study; that the fee would require an estimate payment of \$11,710.00; that DelDOT anticipates to have the developer contribute to a DelDOT project presently scheduled for construction in the summer of 2022 at the intersection of Rt. 24 and Mount Joy Rd. and the intersection of Rt. 24 and Bay Farm Rd.; that the mandatory shared-use path, as required by DelDOT, will be added to the Final Site Plan; that the Applicant will also address DelDOT’s comments stating at least two walkways connecting to the interior of the site to Rt. 24; that one walkway will be along the driveway at the north edge of the property and one walkway on the south end of the frontage connecting to the parking lot from the business park to the frontage of the property may be required; that Mr. Launay’s Assessment of Environmental Assessments and Features Report confirmed that no critical habitat areas

exist on the site; no federally listed or endangered species are located on the site; that no wetlands, streams and drainage conveyances exist on or nearby the site; that the site is presently vacant and consist of 11.5-acres of agricultural land, which is located at the front of the property; that 14.4-acres of immature trees, which were previously cut in 2004, according to Mr. Launay's report; that the Applicant understand the preservation of natural resources and open space is strongly encouraged in the Coastal Area; that the project proposed roughly 11-acres of open space to be preserved; that the Applicant's first request is C/Z 1954, which requests a rezoning of a 8.27-acre portion of Tax Map 234-29.00-49.02 from AR-1 to C-3 to develop 150,000 sq. ft. of commercial space, a permitted use within C-3 or a similarly permitted use; that this component will include 838 storage units and 1,200 sq. ft. of office space; that these are all permitted uses within C-3 according to Section 115-83.8A of the Code; that other C-3 permitted uses include agricultural uses such as greenhouses and wholesale nurseries, residential uses including hotels and motels and commercial uses including convenient stores, gas station, restaurants, business parks and professional offices; that the C-3 (Heavy Commercial District) is usually intended for larger scale service businesses along major arterial roads; that the intended rezoning is consistent with the purposed of the C-3 Zoning District; that the Applicant acknowledges the need to go through the Final Site Plan process and approval, should the rezoning be approved; that there is a demand for storage facilities in Sussex County with many people relocating to the area; that she believes the Commission recognizes the need for commercial development in appropriate areas; that the assessment, prepared by Scaled, notes the use is proposed in a centralized location, with adequate access off Rt. 24; that the proposed rezoning from AR-1 to C-3 is consistent with the Comprehensive Plan and the Future Land Use Map; that specifically the project is located within the Coastal Area, which is a growth area compatible for retail, large shopping centers, offices and office parks when located along arterial roads, like Rt. 24, which is classified as a major collector road; that the proposed C-3 rezoning is consistent with surrounding land uses, as the site is located near commercially zoned properties; that within the Planning & Zoning memorandum, it was noted there have been five Change of Zone applications submitted within a .25-mile radius of the site; that these Change of Zone applications were for gas stations, convenient stores, retail and consumer related services; that the property is adjacent to CR-1 (Commercial Residential) which is identified as Tax Map 234-23.00-115.00, as well as multiple other properties across the street from the site, at the intersection of Autumn Rd. and Rt. 24, which are also zoned C-1; that there is multiple other commercial development along Rt. 24 and Rt. 5, Rt. 24 and Rt. 23 and Rt. 24 and Bay Farm Rd.; that Table 4.5-2 of the Zoning Code confirms C-3 is an applicable district within the Coastal Area; that for all the reasons stated the proposed rezoning is compatible with the surrounding community; that the rezoning request will not have an adverse effect or impact on properties near or adjacent to the site; that the Applicant's second request is C/Z 1955, requesting a rezoning of a 17.63-acre portion of Tax Map 234-29.00-49.02 and the entire other parcel referenced from AR-1 (Agricultural Residential) to MR (Medium-Density Residential) for the purpose to develop 140 multi-family units; that all surrounding properties are zoned AR-1, with the remaining parcels on the opposite side of Rt. 24 zoned as C-1 (General Commercial District) and GR (General Residential); that Peninsula Lakes and The Peninsula, located in the nearby vicinity of the site, are also zoned MR; that the MR Zoning District provides for Medium-Density Residential development in areas which are expected to become generally urban in character, where sanitary sewer and public water supplies may or may not be available at the time of construction, together with churches, recreational facilities and accessory uses, as may be necessary or compatible with residential surroundings; that the proposed rezoning is compatible with surrounding land use; that this includes not only the MR zoned properties, but also the properties zoned GR and C-1; that the general table of height, area and bulk requirements and the table for multi-family units confirm that MR and GR districts are subject to the same bulk requirements; that everything around the site is consistent with surrounding land uses; that the rezoning

request from AR-1 to MR is consistent with the Comprehensive Plan and Future Land Use Map; that the project is located within the Coastal Area, which is a growth area; that the Comprehensive Plan states this is an area most desirable for new housing for a range of housing types, including multi-family; that medium and higher-density residential development in between four to 12 units per acre is appropriate and supported within the Coastal Area, where central water and sewer access and in close proximity to commercial uses and employment centers, where the use is compatible with the character of the area, located along a main road, such as Rt. 24 and where there are adequate levels of service; that the adequate levels of service has been provided through submissions into the record; that detailed in the assessment prepared by Scaled, central water and sewer will be provided by DeIDOT and Sussex County respectively; Title 4.5-2 of the Comprehensive Plan confirms MR is an appropriate district for the Coastal Area; that for all the reasons stated the proposed rezoning from AR-1 to MR is not only compliant with the Zoning Code but also consistent with the Comprehensive Plan and Future Land Use Map; that the last request is for a Conditional Use, which is subject to the approval C/Z 1955 for the development of 140 multi-family units, which will include a clubhouse and playground amenity on a part of parcel 49.02 and the entirety of parcels for 49.03 and 50.00; that as shown on the Preliminary Site Plan, the Applicant is proposing five buildings, with 28 units each, as well as a clubhouse and playground amenity; that parking meets the Code requirements of 280 parking spaces, which equals two units per apartments; that the units are being proposed as apartment units specifically; that the required seven handicap spaces will be provided; that the Applicant is proposing 283 parking spaces with 12 handicap spaces; that this will equal a total of 295 parking spaces; that Section 115-31 of the Zoning Code permits multi-family dwelling units as Conditional Uses subject to the provisions of Section 115-219 for a Site Plan review; that the proposed development will comply with Section 115-188 of the Code for multi-family development; that the proposed development is consistent with surrounding land uses being of semi-public to public character and by promoting the general convenience and welfare of Sussex County; that with nearby properties of Peninsula Lakes and The Peninsula similarly zoned, as well as being located in the vicinity of residential and commercial properties; that MR, GR and C-1 are all subject to the same height, area and bulk requirements for multi-family units; that the proposed development is consistent with the Future Land Use Map, as the Coastal Area confirms the area is an appropriate and desirable area for new housing; that proposed Conditions of Approval have been submitted into the record and for all the reasons stated the Conditional Use is compliant with the Zoning Code, compatible with surrounding land uses and consistent with the Future Land Use Map and Comprehensive Plan.

Ms. Wingate stated when she was originally looking at the Preliminary Plans, she did not understand why the Applicant chose to place the storage at the front of the property, but she now appreciated the choice, as she realized the intent is to leave as many trees as possible.

Ms. Stevenson questioned why the Applicant chose to rezone to a C-3 (Heavy Commercial District) versus a C-2 (Medium Commercial District).

Mr. Robertson reminded the Commission if the rezoning is granted the Application will still require returning to Commission for Site Plan Review for whichever permitted use is requested.

Chairman Wheatley reminded the Commission once a parcel is rezoned the property could be proposed for any use permitted within the approved zoning district.

Ms. Peet stated the C-2 District is limited in regard to what can be done with storage; that C-3 Zoning allows for parking and storage and warehouse-type storage; that C-2 Zoning is more limited regarding

storage requirements and for the proposed permitted use, C-3 is more compatible than C-2 Zoning and the Applicant does understand the Application must return for Site Plan review and approval.

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

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

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

In relation to C/Z 1954 American Storage of Delaware, LLC. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

In relation to C/Z 1955 American Storage of Delaware, LLC. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

In relation to C/U 2315 American Storage of Delaware, LLC. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

#### ADDITIONAL BUSINESS

The Commission moved into Executive Session at 8:04 pm to discuss potential litigation.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to move into Executive Session. Motion carried 5-0.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to move out of Executive Session. Motion carried 5-0.

The Commission moved out of Executive Session at 8:27 pm.

**Meeting adjourned at 8:27 p.m.**

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