

THE MINUTES OF THE REGULAR MEETING OF MARCH 25, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday afternoon, March 25, 2021 in Room 540, Carter Partnership Center, Delaware Technical Community College, 21179 College Drive, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 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 - Absent, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III and Mr. Chase Phillips – Planner I.

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

Mr. Whitehouse noted that there were no changes to the Agenda. Motion by Ms. Stevenson seconded by Mr. Hopkins and carried unanimously to approve the Agenda. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the February 25, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 4-0

OTHER BUSINESS

Lands of Taylor (“Taylormade”) (2020-06)

Final Subdivision Plan

This is a Final Subdivision plan to divide an 8.93 acre +/- parcel of land into 3 proposed lots and residual lands off a 50' wide access easement. Proposed Lot 1 will consist of 1.55 acres; Lot 2 will consist of 0.93 acres and Lot 3 will consist of 0.94 acres. At their meeting of Thursday, October 8, 2020, the Planning and Zoning Commission approved the Preliminary Subdivision Plan. The properties are located on the south side of Asketum Branch Road (S.C.R. 442) approximately 0.21-mile south of Bryans Store Rd. (S.C.R. 432). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 133-14.00-3.05. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

Delaware Army National Guard Training Center

Revised Final Site Plan

This is a Revised Final Site Plan for a proposed 6,800 square foot fitness center to replace the current 1,034 square foot fitness center to be located at 163 Scannell Boulevard in Bethany Beach. This is an existing use of the parcel. This Revised Final Site Plan complies with the Sussex County Code. Tax Parcel: 134-13.00-132.00. Zoning: MR (Medium Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson seconded by Mr. Hopkins and carried unanimously to approve the Revised Final Site Plan. Motion carried 4-0.

S-21-04 Nick's Mini Golf

Preliminary Site Plan

This is a Preliminary Site Plan for an 18-hole miniature golf course, 150 square-foot building, 19 parking spaces, a netted fence and other site improvements to be located at 32967 Coastal Hwy (Route 1) in Bethany Beach. Conditional Use No. 2222 was approved for a miniature golf course by the Sussex County Council on June 9th, 2020 and adopted through Ordinance No. 2713. On December 21, 2020 the Board of Adjustment granted variance for a 40-foot reduction of the front setback and a 5-foot reduction of the rear setback. The 19 parking spaces include 7 on-site parking spaces with 12 off-site spaces. A shared parking study will be submitted by the applicant prior to the Final Site Plan approval. The Preliminary Site Plan complies with the Sussex County Code and all conditions of approval. Tax Parcel: 134-17.11-40.00. Zoning: C-1 (General Commercial Zoning District) and lies within the Combined Highway Corridor Overlay Zone (CHCOZ). Staff are awaiting agency approvals.

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

Cypress Pointe (2005-75)

Revised Amenities Plan & Request to Amend Conditions of Approval

This is a Revised Amenities Plan and request to amend the Conditions of Approval for the existing Cypress Pointe Subdivision which consists of 72 lots. Specifically, the applicant is requesting an amendment to Condition #9 which currently reads, "As stated by the Applicant, there shall be amenities including a tot lot, bike paths, and mulched trail system" to "As stated by the Applicant, there shall be amenities including a pool and pool house." The previously approved Final Subdivision Plan does not show these amenities and instead, shows a pool and clubhouse which does not meet the requirements of Condition #9. The applicant has stated that including these amenities (tot lot, bike paths and a mulched trail system) would "result in a significant increase in Property Owner Association fees for the community" which has caused several homeowners to request that these amenities be removed. As of current, there are 32 homes that have been sold in the community, and the developer owns the 40 remaining lots. There were 28 responses provided from the 32 homeowners within the subdivision. 21 of the 32 homeowners (representing 66% of the current homeowners) indicated that they would prefer that the area remain as open space. Additionally, the developer agreed for the additional 40 developer-owned lots to have the property remain as open space. Overall, 61 of the 72 total lots (85%) agreed to converting to the area to open space. A Revised Amenities Plan noting these changes has been provided. Tax Parcel: 232-5.00-4.00. Zoning District: AR-1 (Agricultural Residential District).

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Revised Amenities Plan and the request to Amend Conditions of Approval. Motion carried 4-0.

Lands of Everett and Betty Rust

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 3.32-acre +/- parcel of land for the creation of two (2) lots plus residual lands with access off a proposed 50-ft ingress/egress access easement. Lot 4A will consist of 1.16-acres +/-, Lot 4B will consist of 1.16-acres +/-, and Lot 4C will consist of 1.0032-acres +/- . The parcel is located on the east side of William Street Road (S.C.R. 309). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-28.00-16.14. Zoning District: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

Lands of Martin Ross

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 97.979-acre +/- parcel of land for the creation of one (1) lot plus residual lands with access off a proposed 50-ft ingress/egress access easement. Parcel 1 will consist of 29.997-acres +/- with the remaining lands consisting of 67.982acres +/- . The parcel is located on the southwest side of Whitesville Road (S.C.R. 64). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-16.00-14.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

OLD BUSINESS

Chair Wheatley stated he was not present for the beginning of the public hearing for C/U 2251 – Heimlich Solar Partners, LLC but listened to the audio and is prepared to participate in the vote.

C/U 2251 – Heimlich Solar Partners, LLC

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

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

Mr. Hopkins moved that the Commission recommend approval of C/U 2251 for **Heimlich Solar Partners, LLC** for a solar field in and AR-1 District based upon the record made during the public hearing and for the following reasons:

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

- c. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
- d. The site shall be secured by fencing with a gate with a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2251 for Heimlich Solar Partners, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2208 – Artesian Wastewater Management, Inc.

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

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

Ms. Stevenson moved that the Commission recommend approval of C/U 2208 for **Artesian Wastewater Management, Inc.** to allow for an expansion of the area approved by Conditional Use No. 1724 and Ordinance No. 1922 and to amend and replace certain conditions imposed by that conditional use ordinance based upon the record and for the following reasons:

1. Conditional Use #1724 and Ordinance #1922 approved the location of a sewage treatment plant for the collection, treatment and disposal of waste on 74.61 acres of land, subject to nine conditions.
2. Conditional Use #1810 and Ordinance #2013 approved the use of the same land as a water treatment facility.
3. This application seeks to add 52.17 acres to the 74.61 acres previously approved for the collection, storage, treatment and disposal of wastewater. The total acreage will be 127.37 acres, more or less.
4. Conditional Use #1725 and Ordinance #1923 separately approved the use of approximately 1,714 acres of land for disposal of the treated wastewater by irrigation.
5. The existing use application as a regional wastewater facility under CU #1724 and Ordinance #1922 and the expansion of that use under this application is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.
6. The regional sewage treatment plant and its accompanying facilities play a vital role protecting Sussex County's most sensitive environmental areas including the Inland Bays and the Broadkill River watershed and their tributaries by providing for the collection, storage, treatment and disposal of waste in a manner that is greatly superior to on-site septic systems.

7. The expansion of the conditional use area and the amendment to the prior conditions of approval will not have any adverse impact upon the County, its residents, or the environment.
8. The expansion of the regional wastewater facility is appropriate for this site because it is in an area of residential development where wastewater treatment is needed now and in the future.
9. The expansion, construction and operation of the wastewater facility will be reviewed and approved by DNREC and must be designed and constructed in accordance with all other applicable Federal, State and County requirements, including those mandated by DNREC and other agencies having jurisdiction over the use.
10. It is appropriate to amend and replace the conditions of originally imposed by CU #1724 and Ordinance #1922 so that one updated and uniform set of conditions applies to the entire 127.37 acre site.
11. It is recommended that the following conditions amend and replace the conditions of approval of CU #1724 and Ordinance #1922:
 - a. The regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.
 - b. The water treatment plan shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance # 2013 approving Conditional Use # 1810.
 - c. Any buildings constructed on the site shall be constructed with an agricultural appearance.
 - d. There shall be a medium density landscaped buffer twenty feet (20') in width adjacent to the storage lagoons along Isaacs Road (Del. Rt. 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 2-35 6.00 28.01). The density and location of these landscaped buffers shall be shown on the final site plan. These buffer areas and the plantings within them must be maintained by the property owner at all times. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub.
 - e. Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.
 - f. One lighted sign shall be permitted along Isaacs Road (Del. Rt. 30) not to exceed 32 square feet in size per side.
 - g. Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.
 - h. Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County Roads.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2208 for Artesian Wastewater Management, Inc. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

PUBLIC HEARINGS

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

Public Hearings

C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a Medium Density Residential District and a CR-1 Commercial Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 43.463 acres, more or less. The property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5). 911 Address: N/A. Tax Parcel: 234-29.00-67.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Staff Analysis, a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the Traffic Impact Study (TIS), a copy of the DelDOT Service Level Evaluation response, a copy of PLUS comments, and a copy of comments from the Sussex County Engineering Department Utility Planning Division.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Schiff Development Group, that also present are TJ Schiff, one of the principals of the Schiff Development Group and Phil Tolliver, a professional engineer with Morris and Ritchie Associates; that the Application is comprised of a 43.5 acre parcel of land which is landlocked; that access to this parcel will be gained through the MR-RPC – Patriots Glen Phase 1 which was approved by County Council in 2019; that this property is located about 1,000 ft. south of the intersection of Route 24 with Mount Joy Road and Oak Orchard Road; that approximately 14 years ago the property for Patriots Glen Phase 1 was rezoned from AR-1 and GR to C-1 – 16 acres and MR-RPC – 93.67 acres with 373 townhomes approved; that these applications CZ 1605 and CZ 1606 were filed by Nentego; that likely due to the real estate recession, the property was not developed as shown on the plan; that in 2010 CZ 1670 was submitted and that application sought to change some of the MR-RPC zoned area to CR-1 and referenced the different colored shaded areas of the property to show the different zonings; that if you drove by the site today, you would see that there are no commercial areas or residences on the site; that in 2019 the zoning for the CR-1 area except for a small narrow portion behind the commercial was changed to MR-RPC and the entire MR-RPC area was approved for 161 single-family units; that this application seeks to make this parcel one zoning classification and change the CR-1 zoning to MR with the RPC overlay over the 43.5 acres for 128 home sites; that if this project receives approval from County Council it would revert back to the original approval in 2007 with two differences, the first is that these would not be townhomes but single-family homes and the second is that there is a reduced number as the approval in 2007 allowed for 393 townhomes and this project for both Phase 1 and 2 would have a combined total of 289 units; that the MR zoning designation allows for four units per acre where public water and sewer are available or will be provided to the site; that today's proposal is for 128 single-family units and the gross density is 2.95 and the net density is 3.52 and is less than the permitted four units per acre; that the wooded area on the property will be preserved is possible as open space; that there are no wetlands on the property and it is not in a floodplain and considered as Zone X on the FEMA map; that part of the project is within a water resource area and the project was designed taking that into consideration to comply with the 35% threshold in Chapter 89 of the Zoning Code; that there are many other developments in this area including Oak Meadows, Baylis Estates, Indian Summer Village and Patriots

Glen – Phase 1; that there is a mixing of zoning classifications in the area including C-1, MR, GR and AR-1; that this is a growing area for residential purposes in Sussex County; that the lands zoned C-1 are closest to Route 24 but as you move away from Route 24, the zoning changes to the residentially zoned districts; that this site is shown as being in the Coastal area on the 2045 Future Land Use Map which is one of the County's growth areas and is appropriate for an MR-RPC development; that on the State Strategies Map this area is in the Level 2 and Level 3 which means that under State standards it is appropriate for growth in the near future and in the long-term future; that two of the primary reasons for using the RPC tool for this development were to maximize open space and to increase perimeter buffering; that this was done with consideration of Phase 1 and 2 being integrated; that open space was set aside and is 9.66 acres which equates to 22% of the site; that this is consistent with Phase 1 as the open space is approximately 27% of the site; that the minimum 7,500 sf lot size is consistent throughout Phase 1 and 2; that perimeter buffer will go along the exterior of all the tax parcel except where it is adjacent to Phase 1; that the buffer is at a minimum of 30 ft. and at one point extends to 278 ft.; that a stub street will be adjacent to the agricultural property to the rear to allow for development that could interconnect in the future; that the community center will have a pool, multi-purpose building, and outdoor patio area, and 24 parking spaces as part of the amenities; that there will be bicycle racks and sidewalks on both sides of the streets within the community; that there will be a walking path throughout the community and there will be one homeowners association for both Phase 1 and 2; that sewer service is available from Sussex County and Tidewater Utilities will provide water to the site; that natural gas is available through Chesapeake Utilities and electricity provided by Delmarva; that fire protection for this site is provided by Indian River Volunteer Fire Department and Troop 7 is the Delaware State Police that covers this region; that it is estimated that there would be approximately 22 new students added to the school age mix if they went to public school they would attend Long Neck Elementary School, Millsboro Middle School and Sussex Central High School; that the developer will coordinate with the school district regarding a location for a bus stop; that when the Service Level Evaluation was submitted to DelDOT for Phase 1, DelDOT responded that it would have a minor impact on traffic; that when Phase 2 Service Level Evaluation was submitted, DelDOT required a TIS to evaluate the impact by both phases; that a TIS was completed and there is a copy of the response from DelDOT included in the Exhibit Notebook; that there are five requirements for improvements listed in the response; that this application is superior to the previous applications and is consistent with the trend of development in the Long Neck area; that it is consistent with the Comprehensive Land Use Plan, the MR district, the requirements of the RPC district and integrates well into the approval for Phase 1 of Patriots Glen; that for all these reasons the Applicant asks for a favorable recommendation to County Council and has submitted a set of proposed conditions and findings of fact.

Mr. Mears commented that he appreciates the proposed sidewalks on both sides of the roads.

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

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

Prior to the recess, the Commission discussed Application C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2). Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

C/U 2207 CBB Cedar Pines, LLC (Marlin Chase F.K.A. Marlin Run)

An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family (75 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 29.34 acres, more or less. The property is lying on the east side of Cedar Neck Road (S.C.R. 357) approximately 0.3 mile north of Hickman Road. 911 Address: N/A. Tax Parcels: 134-9.00-21.00, 21.03, 21.04, 21.05 & 1227.00-1269.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of PLUS comments, a copy of the Applicant's conceptual site plan, a copy of the Applicant's environmental assessment and public facility evaluation report; a copy of the Applicant's 99.9.C response; a copy of the DelDOT Service Level Evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's proposed findings of fact. Mr. Whitehouse noted that Staff have received no correspondence in support of or in opposition to the Application and two mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, CBB Cedar Pines, LLC, that also present are Ben Gordy and Preston Schell on behalf of the Applicant and Zac Crouch, from Davis, Bowen and Friedel; that exhibits were submitted for the record which include the Applicant's PLUS response, the Environmental assessment and public facility evaluation report and the Chapter 99C report; that this application requests a conditional use approval for 75 multi-family units which would be single-family detached condo units; that this development would be named Marlin Chase; that the property contains 29.36 acres of uplands and wetlands; that the subject property is located on the east side of Cedar Neck Road across from the intersection of Cedar Neck Road and Sandy Cove Road; that there are residences located to the north, a mini-storage and boat storage to the south, tidal and non-tidal wetlands to the east; that in 2002 this property was the subject of a conditional use application for 143 multi-family townhouse units which was approved by County Council in 2003; that the Applicant, Mr. Melson passed away suddenly and there was litigation over the estate for a number of years; by the time the estate was settled, the housing market was in a recession and the approvals lapsed; that the subject property was sold to Castaway's Bethany Beach, LLC; that in 2012 the new owners submitted a conditional use application for an RV park and a water park; that application was not popular with local residents; that in 2014 three new applications were filed, one application to rezone the C-1 portion of the property to MR, the second application to rezone a portion of the property to MR-RPC for 45 single-family lots and a conditional use request for 30 townhouse units; that all three applications were approved by County Council; that development of the site was delayed due to the impact of the newly enacted DNREC stormwater management regulations at that time; that in 2018 the final RPC plan for the 45 single-family lots was approved and recorded but the conditional use for the 30 townhouses lapsed in 2017; that another conditional use for the 30 townhouses was approved in 2018; that as of today the site does have valid approval for 75 residential units; that this conditional use Application proposes to maintain the approved density for 75 units but change the unit types based on the current market to all single-family detached condominium dwellings; that central water will be served to the site by Sussex Shores Water Company; that the site is in the Cedar Neck expansion area of the Bethany Beach sanitary district; that stormwater management facilities will be designed and constructed in accordance with DNREC's regulations; that wetlands on the site were delineated by Back Creek Environmental and that delineation shows that there are 7.43 acres of tidal wetlands and 4.41 of non-tidal wetlands existed on the eastern side of the property; all the proposed buildings to be located on the east portion of the site will be located well in excess of the 50 ft. buffer required by Sussex County Code; that the Applicant is proposing a 100-ft. setback from the tidal wetlands and a 20-ft. setback from the non-tidal wetlands; that a 20-ft. right-of-way on the east side of Cedar Neck Road has been dedicated to DelDOT by the Applicant as part of the prior approvals; that there will be an additional 15-ft. wide

easement adjacent to the State right-of-way for a public shared use path; that DelDOT had previously approved the entrance to the development and that entrance will remain in the same location; that the entrance will be designed and constructed in accordance with DelDOT's requirements including any roadway improvements; the property will be served by the Millville Fire Company and is in the Indian River School District; that the entrance will be from Cedar Neck Road as previously approved by DelDOT; that the interior drive is laid out in a rectangular shape and the 75 single-family detached units front on both sides of the drive and sidewalks will be located on the interior side of the street; that all units will be part of a condominium regime and all of the land will be a common element of the condominium so all lawn and landscaping maintenance will be the responsibility of the Condo Association which will ensure a well-maintained and uniformed appearance of the development; that as stated in the proposed conditions, unit owners will be prohibited from applying fertilizer to lands or landscaping; that will be the responsibility of the Condominium Association which will follow best management practices; that there is a large stormwater pond which is centrally located on the site; that the recreational areas will be on the western side of the stormwater pond; that the recreational facilities will include a outdoor pool and deck area, an outdoor fire and grilling area, restrooms and storage area, a tot lot playground, a small fenced dog park, a community garden, 2 pickleball courts, and a central mailbox facility; that there will also be a neighborhood garden park on the east side of the property adjacent to the wetlands; that each unit will have two off-street parking spaces; that in addition to the 150 parking spaces, there will be an additional 51 parking spaces located throughout the property; that there will be a 20 ft. landscaped buffer along the southern boundary of the site adjacent to the mini-storage facility and also along the west side of the property adjacent to the shared use path; that on the northern boundary, the buildings will be set back 35 ft. from the property line and within the 35 ft. setback will be a 20 ft. landscaped buffer; that to the east side of the site all buildings will have a voluntary 20 ft. setback from the non-tidal wetlands; that under the 2019 Sussex County Comprehensive Plan the site is located in the Coastal Area which is a designated growth area under the plan; that the plan states that a range of housing types should be permitted in the Coastal Area including single-family, townhouse and multi-family units; that the plan states that a density of four to twelve units per acre can be appropriate in certain locations; that this site is zoned MR medium density residential which permits 4.356 units per acre; that the property has a gross acreage of 29.36 acres and the 7.4 acres of tidal-wetlands are deducted from that, then the acreage is 21.93 and would permit 95 units under MR zoning; that this Application is for 75 units which is a density of 3.4 units per acre; that is the same number of units that was previously approved for this site; that proposed findings of fact and proposed conditions have been submitted as part of the record for the Commissions' consideration; and that the property is approved for 75 units and this Application is only to change the type of units to single-family detached condominiums.

Mr. Mears asked if there is a plan for a school bus stop.

Mr. Fuqua responded that a school bus stop will be coordinated with the school district but expected to be placed near the recreational center.

Ms. Stevenson asked about the flooding on this property.

Mr. Fuqua stated that any construction will have to follow federal flood regulations and expects that some fill may be added where homes will be built.

Mr. Preston Schell stated that some of the site work has been completed predicated on one of the previous plans; that near the back of the site, it is bermed and then drops down to some woods; that those woods are the non-tidal wetlands; that the area that is flooded on the road side of the berm are old stormwater

ponds which will be abandoned; that a 20 ft. buffer from the non-tidal wetlands and that in the previous plan did not offer any setback from the non-tidal wetlands, the lots went up to the jurisdictional determination of the non-tidal wetlands; that there will be limited fill brought to the site and that is one reason for the large stormwater pond in the center of this development which will supply most of the fill needed.

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

The Commission found that Ms. Anna Araya was present by teleconference. Ms. Araya stated that she and her husband own the lot directly across from the subject property at the intersection of Sandy Cove Road and Cedar Neck Road; that they are against the development as they have concerns about the number of units, the environmental impact on the area, the traffic, the safety and the pollution; that if the development is approved, there should be fewer units and buffers on all corners; that as a property owner, she should be allowed to install a high fence; that the traffic congestion should be further investigated; that there should be better access to Route 1 and Route 26; that this will impact property values; that if there are to be wetlands impacted this should be addressed; and that this is not a good proposal as it currently stands.

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

Prior to the recess, the Commission discussed Application C/U 2207 CBB Cedar Pines, LLC (Marlin Chase F.K.A. Marlin Run). Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

C/Z 1921 Stephen M. Sprogell

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.0 acres, more or less. The property is lying on the south side of Sprogell Lane, approximately 873 feet east of the intersection of Whites Neck Road (S.C.R. 347) and Sprogell Lane. 911 Address: 30261 Sprogell Lane, Dagsboro. Tax Parcel: 134-8.00-17.01.

Mr. Whitehouse advised the Commission that submitted into the record a copy of the Applicant's conceptual site plan, a copy of the Applicant's Environmental Assessment, a copy of the State's PLUS comments and a copy of the Applicants response letter to the PLUS comments, a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation response, and a copy of comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted that Staff have received 90 letters in support of or three letters in opposition to the Application and one mail return. Mr. Whitehouse stated that some of the comment letters are duplicate letters.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, Nutelli Communities, Mr. Sprogell is the property owner; that present are Mr. Tom Nutelli and Mr. Ken Usab from Morris Ritchie Associates; that submitted for the record is an executive summary of the Application, the Environmental Assessment and Public Facilities Report, the PLUS response letter and other relevant documents; that this is an Application to rezone a five-acre parcel of land from AR-1 to

MR-RPC overlay as an addition to the existing Bay Forest Club MR-RPC; that Bay Forest Club is located north of Millville and east of White's Neck Road; that it is a rectangular portion of land with a panhandle for access; that Bay Forest Club was originally approved in 2004 as an MR-RPC containing a mixture of 808 residential units, consisting single-family lots, villas and townhouses; that in 2005 the RPC site plan was amended to provide a street connection to an existing approved but undeveloped subdivision that contained 32 lots which was called Bywoods; that this approved subdivision was surrounded by Bay Forest Club and was interconnected; that Bywoods became part of the Bay Forest Club subject to the same restrictions and benefits; that in 2014 the Applicant appeared before the Commission requesting MR-RPC zoning for a 30-acre parcel as an addition to the MR-RPC; that Application was approved by County Council and added 84 units to the RPC so that increased the RPC to 913 units; that this Application requests the rezoning of a five acre parcel to MR-RPC and will be used as the site of a new section of the development and will contain 23 units and will be made up of 15 single-family detached condos and eight villa townhouse units; that these units will be similar to other homes being built in the development; that these 23 units would increase the total number units in the RPC to 936; the increase in density would be insignificant as it would go from 2.19 to 2.22 units per acre and this is significantly less than what is permitted by the zoning code; that the five acre parcel is currently zoned AR-1 but is surrounded by lands that are zoned MR; that according to the Land Use Plan this site is in the Coastal Area which is a growth area; that the entrance will be from the existing Sanderling Road and will have an internal connection to Flycatcher Way, so there will be two points in ingress and egress to this section; that the townhome villas will be located on the eastern portion of the site and will have two buildings each with four units; that the 15 single-family condo units would be located on the remainder of the land; that the existing access to the parcel which is from Sproge Lane will be eliminated and most of the panhandle area will be incorporated into the existing stormwater management system as an extension of the existing pond; that 69 parking spaces are required and will be provided with an additional 18 off-street parking spaces for a total of 87 parking spaces; that there will be a village green of open space in the center of this portion of the development between the single-family units and a small area close to Sanderling Road which creates an open vista view through the center; that over 40% of this section will be in open space; that there will be a 6-ft. wide concrete walkway in this section which links up with other walkways throughout the development for pedestrian access to all the community; Environmental Resources, Inc. performed a wetland delineation and found that there are no wetlands located on the site and confirmed with U.S. Fish and Wildlife Service that there are no federally listed animals or plants or natural communities that are protected on the site; that there are no archeological sites or national listed properties on the site; that the stormwater management will meet state regulations and will be a continuation of the existing system in the development; that the development of this section will improve stormwater quality from the site by eliminating any nutrient run off from the existing conditions; that the site currently has an unpaved dirt road, an on-site septic system and a small onsite livestock operation; that as with the rest of the Bay Forest Development this section will be served with water for domestic use and fire protection by Tidewater Utilities and have an elevated water tower within the Bay Forest Development; that this section will be served by Sussex County Sewer District and adequate capacity is available; that DelDOT indicated that traffic impact for the development of this section would be negligible and no a Traffic Impact Study was not required; that no additional roadway improvements would be required as the Developer has already provided improvements as part of the existing development; that the purchasers of the 23 units in this section will be subject to the same restrictions and benefits as the owners in the rest of the development and that includes the use of the existing recreational amenities; that Bay Forest Club has been a successful community with approximately 900 lots built and sold; the Developer Nutelli Communities was presented Best in America Living award in 2019 from the National Association of Homebuilders for the Bay Forest Club development and was also named Delaware Community of the Year in 2019 by the Homebuilders Association of Delaware for the Bay Forest Club Development; that the inclusion of this

five acres parcel is a textbook infill parcel; that the construction of the additional 23 units is appropriate and a logical addition to this community and will eliminate the existing use which is not compatible with the existing residential uses of the Bay Forest Club development; that the Applicant has submitted proposed findings of fact and conditions for the Commissions consideration which are similar to the conditions that the Commission and County Council imposed on the prior additions to the Development that were granted to the RPC; that the proposed conditions are as follows:

- A. That the conditions imposed by Ordinance No. 1670 for Change of Zone No. 1526 shall apply to this application, with the exception of the so noted total number of units. The property that is the subject of this application shall be integrated into the overall development scheme of the Bay Forest project, and as a result, those conditions shall apply equally to this tract as part of the overall development.
- B. The number of new units associated with this application shall be 23 units comprised of 15 single family detached units and 8 townhouse units.
- C. As a result of this application, the total number of units approved for the Bay Forest Club, MR-RPC shall be 936 units.
- D. Before proceeding with any construction involving land that is the subject of this application, the applicant shall submit a revised master plan integrating this land into the Bay Forest Club RPC.

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

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

Prior to the recess, the Commission discussed Application C/Z 1921 Stephen M. Sprogell. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

Recess 4:55 P.M. – 6:00 P.M.

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

Chairman Wheatley announced that the Commission would hear Additional Business prior to the next public hearing.

ADDITIONAL BUSINESS

Haileys Glen (2017-17)

Request for a 6-month Time Extension

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the request for a 6-month time extension for Haileys Glen (2017-17). Motion carried 4 – 0.

PUBLIC HEARINGS

C/U 2206 Linder & Company, Inc. (Evans Farm)

An Ordinance to grant a Conditional Use of land in a GR General Residential District for multi-family (200 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 50.62 acres, more or less. The property is lying on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Road (S.C.R. 350) approximately 696 feet northeast of Old Mill Road (S.C.R. 349). 911 Address: 31434 Railway Road, Ocean View. Tax Parcel: 134-12.00-74.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit booklet, a copy of the Traffic Impact Study (TIS), a copy of the DelDOT Service Level Evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of a letter from Tidewater Utilities, a copy of the Staff Analysis, a copy of the State's PLUS comments and a copy of the Applicant's response to the PLUS comments, a copy of the Applicant's Environmental Assessment, and copies of the previous approvals for the site. Mr. Whitehouse noted that Staff have received a petition of over 900 signatures in opposition to the Application and 262 letters in opposition to the Application and ten mail returns. Mr. Whitehouse stated that some of the comment letters are duplicate letters.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Linder and Company, Inc. who is also the owner of the property; that also present by teleconference on behalf of the Applicant is Ms. Andrea Fineroksy; that present are Mr. Mark Davidson, Principal Land Planner and Alan Decktor, Professional Engineer from Pennoni and Eric Wall, registered Landscape Architect; that an exhibit book has been submitted as part of the record and the cover page of that report shows a list of people who were involved in this project and lists their professional expertise and training; that this exact site had a previous site plan quite similar to this in 2010 with the same level of involvement by professionals; that the prior 2010 Conditional Use application number 1849 was approved by County Council; that Final Site Plan approval was granted in 2016; that what transpired between the first application and the application being heard this evening is primarily the addition of Bay Forest Club which is on the northwestern side of this property; that the remainder of the adjacent area is primarily residential properties which have been in existence for many years just north of Millville; that the Applicant is surprised by the volume of opposition to this Application as it is virtually identical to what was approved in 2010 and expected to be built until the approval lapsed; that there was a meeting with the Linder Company and one of the opposition groups; that the Applicant made adjustments to the site plan to address some of the concerns raised; that the information provided by the professionals who were involved in preparing the Application must be given greater weight than that of individual lay people; that this is one reason why the County often has professionals from other agencies attend these meeting to advise and give information when required; that DelDOT often has an expert here to assist the Commission and similarly with DNREC when there are environmental concerns.

Chairman Wheatley commented that Mr. Bill Brockenbrough and Mr. Todd Sammons from DelDOT are available by Teleconference to assist the Commission and answer questions.

Mr. Hutt stated that what he has said is not intended to be disrespectful to any member of the public involved in the process and anyone who wants to opine on an application will be given the opportunity in accordance with the rules and guidelines of the meeting; that there are things about an Application such as traffic and stormwater management that do require a level of expertise; that there are a number of misconceptions about this Application that such be addressed from the outset; that if these

misperceptions are addressed from the outset it will help moving forward with the details of the Application; that many of the opposition comments address this Application as a Change of Zone application, the zoning classification will not change, this is a Conditional Use Application; that another misconception is that this Application is requesting high density or bonus density, there are other zoning designations for high density within the County but this Application is for medium density classification and there is no bonus density being sought; that the Applicant seeks to use the base density in a medium density district of 4 units per acre with 10,000 sf lots in a General Residential Zoning District (GR) which is one of two medium density zoning districts in the County, the other is the Medium Residential Zoning District (MR); that this Application seeks 200 units on a little over 50 acres situated in 17 buildings; that the reason this is a Conditional Use Application before the Planning Commission is that it is a request for multi-family dwellings and will be addressed; that it was important to lay the groundwork of what is not being sought in this Application to help clear any misconceptions; this property sits at the corner of Railway Road and Old Mill Road; that the property is bisected by Railway Road, on the east side that portion of the parcel contains a little over 2.25 acres containing an old farmhouse and some accessory buildings and an old chicken coop and on the west side the parcel contains 48.4 acres which is unimproved and currently used for agricultural purposes; that tonight's Application is for 17 buildings on the western portion of the property containing 200 units; that the entrance to Evans Farm would be off of Old Mill Road; that when you enter the property off Old Mill Road, there would be a looped parking lot that connects all of the buildings; that at the entrance would be the common facilities for Evans Farm which will include a swimming pool, a pool house, a sand volleyball court, tennis courts and a basketball court; that there will be a large area of open space at the center of the property and there will be a walkway that connects all of the interior buildings; that there will be an interior sidewalk for the residents of this Development; that there will be a sidewalk on the outside of the parking loop also; that there will be single story garage buildings for each unit on the exterior of the parking loop; that a 30 ft. landscaped buffer proposed for the entire perimeter of the site; that there are 3.6 acres of wooded wetlands on the northwestern portion of the property which will remain undisturbed; that this site generally slopes from Old Mill Road to the north eastern portion of the property; that stormwater management is proposed on the northern portion of the property adjacent to Railway Road; that Ephemeral Wet Ponds are proposed as part of best management practices for stormwater management; that there is a wide walkway from Railway Road into the site; that this will serve as both an emergency access entrance for first responders in addition to being a connection to the shared use path that will be added as part of the improvements to Railway Road; that on the east side of Railway Road the existing farmhouse, outbuildings and chicken coop will be removed and it is intended that a maintenance building for the Development be placed on these two acres; that some of the letters of opposition noted that these buildings may have asbestos siding or shingles and that when being removed, it would be properly abated and removed from the property; that sewer services would be available to the property as noted by the Sussex County Engineering Department; that water will be provided by Tidewater Utilities; that many of the opposition are critical of there being apartments in this area which is surprising as almost every person has at some time in their life lived in an apartment; that sound land use planning lists that there should be a mixture of housing types within an area; that the Sussex County Comprehensive Plan lists in many places that Sussex County is primarily being developed with single-family homes and that further encouragement should be given to multi-family dwellings and structures throughout Sussex County; that based on the negative reaction to the term apartments, the Applicant has been investigating to see if it would be appropriate to change this to condominiums; that would just change this development from rentals to ownership and would not change the Conditional Use that is being sought; that in the Sussex County Code the term multi-family is defined as both apartments and condominiums and the request is for 200 multi-family units; that if they are apartments they would be market rate with annual leases required; that it is expected based on the number of bedrooms in the apartment that the monthly rental rates would be from \$1,300 - \$1,900;

that the occupancy rate would be a maximum of two people per bedroom; that the target market is a full-range market for individuals seeking to lease instead of purchase and for people who work in the area; that this will not be Section 8 housing, the Applicant does not have any Section 8 housing within their portfolio; that this property is in the GR Zoning District; that the adjacent properties to the east and south are also in the GR district; that a small property on the adjacent parcel to the southwest is zoned General Commercial (C-1) and the adjacent property to the west is zoned MR and the adjacent property on the remaining northern boundary of the property is zoned Agricultural Residential Zoning District (AR-1); that the Sussex County Code defines the purpose of the GR district is to provide for medium-density residential use including all manufactured homes; that there are two permitted uses of land within the GR district, the first is any use which is permitted in the AR-1 district predominated by single-family homes and the second is manufactured home units; that within the GR district there are a number of additional uses allowed by using the Conditional Use tool and one is for multi-family dwelling structures Articles IV through XX; that the term multi-family dwelling is defined as apartments, garden apartment, condominiums, duplexes or similar structure; that this proposal is for multi-family structures in the GR district; that the purpose of the Conditional Use states that these “uses are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment on location and site plan”; that housing is certainly of a public or semi-public character and is essential and desirable for all individuals; that this presentation will show the consistency with Sussex County’s Comprehensive Plan and will review some site details that make this plan superior to the plan that was approved in 2007; that the property was acquired in 2005 from the Evans Family; that when this property was purchased the surrounding area was largely wooded and agricultural in nature; that the adjacent communities have filled in many of the adjacent wooded areas; that this property throughout history has largely been used for agricultural purposes as it is today and this is one of the last developable pieces in this area that is not a wooded wetland or other area that is not appropriate for development; that the zoning map shows a large amount of GR zoning in this area but even a larger amount of MR zoning; that the density in both GR and MR is four units to the acre; that the Conditional Use that is being sought is for 3.95 units to the acre; that there are provisions within the County Code to allow an Applicant to seek up to 12 units to the acre but is not part of this Application; that the request is consistent with the zoning applications in this area; that one opposition to this Application is that there is nothing like this in this area but some of the buildings in the Bethany Bay community are similar to the plans for this community; that the 2019 Sussex County Comprehensive Plan and the 2045 Future Land Use Map show that this property and the surrounding properties are located in the Coastal Area which is considered to be one of the seven growth areas in the County; that the Comprehensive Plan states that the “Coastal Areas can accommodate development provide special environmental concerns are addressed”; that it goes on to state that Medium and higher density (4 – 12 units per acre) could be supported in certain areas; that everyone one of the County’s residential zoning districts is appropriate within the Coastal Area and includes MR and GR in addition to the High Density Residential Districts (HR-1 & HR-2); that there are a number of considerations in the Comprehensive Plan of when medium and higher density is appropriate and most notably is the availability of public water and sewer which has been addressed; that proximity of commercial uses and employment centers and the nature and character of the area are additional considerations which will be addressed; that this property is in close proximity to the town of Millville which has seen substantial growth in recent years including a new Beebe facility which could be an employment center for residents of the proposed development; that another consideration for the Commission is the State Strategies mapping tool often referred to as the State Strategies Map and this property contains Level 2 and Level 3 areas according to this map; that Level 2 areas are where the State anticipates growth in the near-term future and Level 3 area growth in the longer-term future; that one of the areas most discussed in any land development application is the

impact on area traffic; that this Application went through the PLUS process where all the various state agencies has an opportunity to comment; that according to the Service Level Evaluation response from DelDOT this project is expected to have a minor affect on traffic; that when a project has a minor affect the Applicant can choose to contribute to an area wide study fee in lieu of a Traffic Impact Study (TIS); that this project had a preliminary meeting with DelDOT and a copy of the report from that meeting is part of the record and an area wide study fee was established with two additional points; that the first point calculated the area wide study fee and the other two points address the off-site improvements; that the first require the Developer should improve Old Mill Road from Railway Road intersection to the western edge of the site frontage to local road standards which include two 11-foot travel lanes and 5-foot shoulders and there is enough right of way to allow this to occur; that in addition there will be a 10-foot wide shared use path along Old Mill Road; that the third point is that the Developer should make similar improvements to Railway Road, from Old Mill Road to the northern edge of the site frontage to local road standards which include two 11-foot travel lands and 5-foot shoulders and again there would be a 10-foot wide shared use path along the frontage of the property; that there are some cross road pipes on both Old Mill Road and Railway Road that will be updated when the roadwork is completed; that when the shared use paths are completed these portions of Railroad Road and Old Mill Road will be the safest areas for a pedestrian to travel; that a second point about traffic is that for this site 1,088 trips per day are anticipated and according to DelDOT calculations that if there were 112 single-family homes on this site they would generate an equal amount of traffic; that much of the opposition stated that if these were single-family homes there would not be as much traffic generated but DelDOT manuals disprove that; that another topic that is closely examined in most applications that come before the Commission in this area is stormwater management because of its proximity to inland bays and its tributaries; that the property drains from the southwest corner to the northeast corner; that the pre-development drainage analysis shows that some of stormwater from the Bay Forest Community and from the intersection of Railway Road and Old Mill Road which would have to be handled by the Evans Farm stormwater management systems; that the post-development drainage analysis shows that there is 4.36 acres from Bay Forest which would be managed by the stormwater systems on the subject property in addition to the areas at the intersection of Railway Road and Old Mill Road; that the best management that has been selected for this project is Ephemeral Constructed Wetlands; that in the previous images you can see that following a rain event there was water on the site; that these Ephemeral Ponds will use that existing condition and enhance it to be able to manage the stormwater for this site; that there are numerous benefits to Ephemeral wetlands which are shallow in depth and help to reduce peak stormwater flows and function like a filter and remove pollutants similar to a natural wetland; that in addition there is a mixture of plants that will go into the Ephemeral wetlands which will make them a habitat for animals and pollinators; that this property is not in a flood plain and is in zone X on the FEMA maps; that the property is in an area designated as a fair recharge area and the northwest portion is designated as a good recharge area; that there are no known t archeological sites or national listed properties on the site; that there will be a 30-foot forested buffer around the perimeter of the site which includes the boundary along Old Mill Road and Railway Road; that the existing wooded wetland property on the northwest portion of the property will remain and function as part of the perimeter buffer and where the Ephemeral wetlands will function; that the Applicant has taken some of the concerns of the opposition and incorporated them into the conceptual site plan; that one of those items is some elevated areas along the entrance to the community in addition to the buffer so it will not look out of character; that the many of the opposition letters referenced the height of the proposed structures as being out of character, the height restriction for Sussex County is 42 ft. and the proposed structures will be in compliance with Sussex County Code; that Chapter 8 of the Comprehensive Plan is the housing chapter; that Chapter 8.2 states that “while the County allows for multi-family (duplexes, townhouses and apartments, etc.) the primary housing type is detached single family” and that sets up a series of strategies and goals within the code and one of those is that the County should consider the ability to

establish other housing types or reduce the need for a Conditional Use for a multi-family development which is the nature of this Application; that strategy 8.2.3.3 repeats that the County should consider revisiting the Zoning Code to determine in districts where multi-family housing is currently a Conditional Use should be made a permitted use if water and sewer are already available and on the site; that this shows what the County's vision is with regard to multi-family structures within the housing options that are available throughout Sussex County; that another point that shows the need for multi-family housing is how quickly multi-family develops and fill; that there are three such projects in the County and by reputation almost instantaneously had a waiting list; that included in the packet is a letter from a certified commercial investment manager with Emory Hill describing the market for multi-family units and the positive impact they would have on the area; that at the beginning of the presentation the testimony of experts was compared to that of lay persons however, in the opposition's documents was a report from a laboratory that a shingle from the old buildings was tested and found to be asbestos; that the Applicant proposes to hire a professional asbestos abatement company to remove those structures from the property; that another email submitted by the opposition from Blair Venables, hydrogeologist with DNREC following a meeting with the residents of Banks Acres; that report has numerous items but one item states that "prior to approving new construction upgrading of the Banks Subdivision, the County must require the owners, investors or planners to demonstrate that stormwater of the project will have no net increase in the stormwater load passing through the Banks Acres subdivision"; that Mr. Venables described the site plan review process conducted at the outset of each Planning and Zoning Commission meeting; that part of that process is to make sure that an applicant who have received preliminary approval for a project gets the necessary approvals from the State agencies; that one of the baseline requirements when the Sussex Conservation District reviews an application is that a developer cannot increase the amount of stormwater leaving a property; that in the materials online there is an updated response from DelDOT and there may be additional upgrades required of the Applicant and discussions will continue with DelDOT as the project moves forward; that the Applicant was surprised at the amount of opposition to this project as it is essentially redoing a previously approved project; that there are some enhancements to the current project; that the first is the addition of the forested and landscaped buffer around the entire perimeter of the parcel; that the landscaping plan for this property will add an additional 570 deciduous and evergreen trees to the existing 3.6 acres on the northwestern portion of the property which will be left undisturbed; that these trees will provide additional screening from adjacent properties and roadways; that another enhancement from the previous plan is the minimalization of soil disturbance and grade changes because of the use of the Ephemeral wetlands; that one of the features of the Ephemeral wetlands is that they are shallow in depth; that the third enhancement is the creation of the Ephemeral wetlands as they will improve the water quality and remove pollutants and have some aesthetic appeal and provide for ground water recharge; that the fourth enhancement is that is greater preservation with the addition of these elements of scenic views and provide for natural resource protection where the wetlands remain undisturbed; that there will be ample opportunities for the residents of Evans Farm to enjoy the outdoors with an internal walkway and the more traditional exterior walkway and all the amenities at the entrance to the Community; that the Applicant requests recommendation of approval for this Conditional Use for the same reasons as it was previously approved and because the project has been enhanced; and that the Applicant has a proposed set of findings of fact and conditions which will be submitted as part of the record.

Chairman Wheatley asked Mr. Sammons from DelDOT to confirm that the daily trips from 200 multi-family homes would equal those of 112 single-family homes.

Mr. Sammons confirmed that the daily trips of 200 multi-family homes would be like those of 112 single-family homes.

Mr. Mears asked Mr. Sammons that there was testimony given that if developed this community would have a minor impact on roads.

Mr. Sammons confirmed that it could be subjective to how people view this but to DelDOT it is viewed as a minor impact as stated in the service level response.

Mr. Mears asked if it was typical for the Applicant to provide upgrades to the roads including a shoulder.

Mr. Sammons stated that this is typical.

Mr. Mears asked how many units were proposed for the previously approved Conditional Use 1849.

Mr. Hutt stated that the proposal was also for 200 units.

Mr. Mears asked when the previous approval expired.

Mr. Davidson responded that the Final Site Plan approval was in March 2016 and expired in 2019.

Mr. Mears asked Mr. Davidson to expand on the requirements for stormwater management.

Mr. Davidson stated that a pre-development analysis and post-development of the subject property and surrounding area must be conducted in order to get stormwater management approval in the State of Delaware; that in the pre-development the report shows what drains onto the property and what the property generates in stormwater and what it does with the runoff and includes the surrounding areas; that some of the drainage from the adjacent property and from Railway Road and Old Mill Road will come into this property and the stormwater management system will manage this through the Ephemeral wetlands that are proposed for this development; and that the discharge rate from this site cannot be over the pre-development rate that occurs currently and will be held onsite in the by the best management practices proposed for this site.

Ms. Stevenson asked what amenities are being proposed and if the proposed swimming pool would be large enough for the residents.

Mr. Hutt stated that this company has developed communities throughout the State of Delaware and the sizing of the pool and amenities is calculated on a per-unit basis.

Chairman Wheatley asked for a definition of Ephemeral Wetlands and what type of ongoing maintenance would be required.

Mr. Decktor stated that Ephemeral wetlands is a best management practice (BMP) which is outlined in the DNREC list of options for stormwater facilities; that the nature of why the Ephemeral wetlands was chosen is the rear of the site is that the seasonal high groundwater is shallow in this location; that the great option is that water can sit in the bottom of the structure; that the bottom of the structure can be at the seasonal high water table or below and you apply the storage above; that this BMP would be landscaped with a detailed landscaped plan for this structure; that due to the vegetation would be a natural pollutant remover with nitrogen, phosphorous and total suspended solids; that this BMP would have a forebay, so that water entering this structure would first enter the forebay at a lower elevation to collect any sediment that would be conveyed to this structure; that the runoff would overflow into the wetlands and conveyed through it and out to the outfall in the existing tax ditch; that in addition to the

proposed BMPs the site itself had different soil types and different ability for infiltration with lower runoff; that DNREC has specific guidelines which outlines the design and the maintenance of the Ephemeral wetlands.

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

The Commission found that Mr. Tom Goglia, representing the Evans Farm Watch Group spoke in opposition to the Application. Mr. Goglia stated that Evans Farm Watch is a coalition of 11 communities in the unincorporated areas on the northeast side of Millville formed to oppose CU 2206; that they have over 1,300 opposition petition signers; that the mission of the group is to protect, maintain and enhance the quality of life in the community; that the Evans Farm development is the wrong development in the wrong place at the wrong time; that the group opposes this development because it will increase traffic congestion and roadway safety, that it will impact the character of the community, and there are concerns about stormwater management and pollution; that the traffic study in the Application was prepared in 2005 and the traffic counts for these country roads are 7 – 20 years old; that during the past 16 years there has been an increase of over 2,000 new homes in the immediate area which would mean as many as 4,000 additional cars; that there are more pedestrians and more cyclists on the roads; that he requests the Commission to make a decision based on public safety and require new traffic studies.

Chairman Wheatley asked that a representative from DelDOT address the concerns regarding the age of the traffic studies.

Mr. Bill Brockenbrough stated that the development of 200 homes does not necessarily require a traffic study; that looking at the volume of traffic, congestion is not seen on the local roads off of Route 26; that the volumes are relatively low; that the volumes on Route 26 is high and there is definitely seasonal congestion on this route; that the daily volumes are not high and therefore, did not require a new traffic study.

The Commission found that Mr. Wally Jensen, representing the Evans Farm Watch Group spoke in opposition to the Application. Mr. Jensen stated that he and Jackson Chin prepared this portion of the presentation regarding stormwater, pollution, and threats to clean water; that this project will exacerbate the problem with flooding from stormwater as it makes its way to Whites Creek and showed pictures of the current flooding issues during rain events; that this proposal will result in the loss of good draining soil as it is replaced by concrete, asphalt, and structures; that the proposed lining of the stormwater management pools will be a negative factor in the proposed drainage system; that the stormwater will be forced onto Railway Road and into the neighboring communities; and that the stormwater is being circulated across Railway Road, back and forth through pipes and will eventually push the water into the Banks Acres subdivision.

Chairman Wheatley asked Mr. Jensen how this information was determined.

Mr. Jensen stated that this information was determined by Mr. Jackson Chin, an electrical engineer.

Mr. Mears commented that the Banks Acres subdivision was developed in the 1970s; that it is at a lower elevation than the surrounding area; and that there is no stormwater management on the property.

Chairman Wheatley explained to the speaker that there is a law in place that states that you cannot discharge water from your property to your neighbor's property.

Chairman Wheatley asked Mr. Chin to discuss his civil engineering qualifications.

Mr. Jackson Chin spoke by teleconference and he stated that he is an electrical engineer but understands all branches of engineering; that water flows like electricity; that from all the impervious buildings that are being built all the water is going into drains and all the drains are being channeled into the Ephemeral ponds and the two railway ponds; that previously that water was not being channeled in that direction; not the water is being taken and added to the one corner which has the most flooding currently; that the original plan was approved with a large retention pond in the center of the property; that plan has changed drastically; and that all the water is being pushed onto the neighboring communities.

Mr. Mears commented that the older developments have problems with flooding, but the newer developments do not have the same issues because they have stormwater management and can contain the water on the property.

Mr. Jensen reminded the members that the responsibility of the Commission on behalf of the citizens is to secure safety from fire, flood and other damages, to facilitate and provide adequate provisions for public requirements, transportation, water flowage, water supply, water and air pollution abatement and drainage, to preserve the character of the particular district involved, to preserve the conservation of property values and natural resources, and the general and appropriate trend in the character of land, building and population developments; that the Evans Farm proposal is wrong for this community because of the possible damage to the quality of life, the threats to health and welfare of all residents and potential damage to the environment and ecosystems; that for these reasons the request is that you deny this Application.

The Commission found that Mr. David Bartlett, representing the residents of Banks Acres spoke in opposition to the Application. Mr. Bartlett stated that the development to the north and east of Evans Farm relies on private wellheads for potable water needs; that Banks Acres sits across the road from Evans farm; that there are two stormwater ditches on the Banks Acres property; that during every major rain event the private wells of the residents who live adjacent to the ditches are placed in jeopardy from contamination from Evans Farm and the Asbestos laden fibers from an abandoned chicken house on the 2.2-acre parcel which is part of Evans Farm; and that wellhead protection for potable well water is a 3rd world, developing country issue, it should not be a Sussex County issue. Mr. Bartlett showed pictures of the recent flooding in the area during his presentation.

Chairman Wheatley explained to the speaker that in its natural state water may run off the property, however, when developed, the Developer is not allowed to have water run off the subject property and on to other properties; that they must have a stormwater management plan and this plan will be monitored by Sussex Conservation District.

Mr. Bartlett stated that there are also concerns about the asbestos fibers coming from the abandoned chicken house that may be transported and deposited near residential wellheads.

Mr. Hopkins asked the speaker if he would like the buildings to remain on the parcel because the Applicant stated that the buildings would be removed by a company certified in asbestos removal.

Mr. Bartlett stated that the group would like the buildings to be removed and for the removal to be monitored by DNREC and that the Commission deny the Application as it is out of character with the neighborhood.

The Commission found that Mr. Marty Lampner, President of White's Creek Manor spoke in opposition to the Application. Mr. Lampner stated that Evans Farm Apartments is not in keeping with the area; that the housing in the White's Neck area is more than 80% single-family home; that though it is part of the Coastal Area it still has a rural feel with homes and farms; that it is a diverse area with wildlife and open space; that the suggested comparisons given by the Applicant are not like this development; that the apartments at Bethany Bay are 850 ft. from any single-family home; that Mr. Hutt stated there would be 17 buildings but with the garages there will be 34 buildings on this property; that this entire area suffers frequent outages even after Delmarva Power brought a new 750KV line; that there is only one provider of high-speed internet in the area and when more people are added to the system it increases the likelihood of a catastrophic failure; and that there is a need for apartments but there are other areas more suited to this type of development.

Recess 9:10 P.M. – 9:23 P.M.

The Commission found that Mr. Mike Gillease spoke in opposition to the Application and asked when the previous development for this property was approved.

Chairman Wheatley stated that the property did have previous permits that were not acted upon over the years.

Mr. Gillease stated that because the permits have expired that it is that Applicant's lost opportunity; that he believes that there were 2,000 building permits issued in the first six months of 2020; that if 200 apartments are built, it will mean approximately 400 cars; that traffic has already been addressed; that when you go to the beach the parking lots are full and cars are lined up on Route 1 to get in; that Route 113 cannot handle the volume of traffic currently; that property taxes were increased last year because Indian River School District needs a new high school because of the volume of families with school age children moving into the area; that he has some questions such as does this Commission have a plan on how many building permits will be issued; that the developer should pick up some of the cost for infrastructure.

Chairman Wheatley stated that the Developer does contribute towards infrastructure improvements.

The Commission found that Ms. Chris Falvello, Evans Farm Watch Group spoke in opposition to the Application. Ms. Falvello stated that she and her husband have had a house in South Bethany but because of the congestion moved to the Bay Forest Community; that this area has an intangible quality with a mix of water, sand, sun, bays, creeks, flat farmland and forests; that this area has been changing since 2009; that if this development is approved that the view from her backdoor will be a 15-car garage; that the original development showed that the buildings would be further away from the property line; that the new site plan shows that the buildings are pushed out; that people live here because they choose to live here; that there will be a tipping point; that some neighbors have sold their home in Bay Forest and left after learning of the proposed development; and that the Commissions duty is to protect property values.

The Commission found that Ms. Theresa Sparcado spoke in opposition to the Application. Ms. Sparcado stated that the traffic on Club House Road where she lives is constant; that a fence cannot be constructed at the front of her property because of County setback rules; that there was a cornfield just down the street when she bought her house which is now a development; that she has concerns about evacuation from her property with added large developments; and that she has concerns about first responders being able to reach people in an emergency. Ms. Sparcado also read a letter of opposition into the record from

the HOA for the residents Old Mill Acres.

The Commission found that Mr. Charlie Yunkes spoke in opposition to the Application. Mr. Yunkes stated that no one spoke in favor of this Application but there has been a lot of opposition; that there are drainage issues, and it needs to be addressed; and that there will be a need for bigger firetrucks, more ambulances, and police.

The Commission found that Mr. David Knepp spoke in opposition to the Application. Mr. Knepp stated that he is the HOA president for Denton Manor and represents 106 property owners; that the residents of Denton Manor are not against development but want the interests of all the people that each new development will effect; that the roads in this area have not been brought up to current road standards; that there are safety issues on the roads in this area.

The Commission found that Mr. Bill Hand spoke in opposition to the Application.

The Commission found that Mr. Bill Murphy spoke in opposition to the Application. Mr. Murphy stated that no one cares about the animals but just keep building.

The Commission found that Mr. Mike Peterson spoke in opposition to the Application. Mr. Peterson stated that he has concerns about flooding in the area; that the development looks like a compound; and it is not in keeping with the area.

The Commission found that Ms. Terri McGrath spoke in opposition to the Application. Ms. McGrath states that there is already a problem with the noise from Old Mill Road and this complex will exasperate the noise issues; that traffic will be impacted; and that she has concerns about who will rent the apartments.

The Commission found that Mr. Charlie Fisher spoke in opposition to the Application. Mr. Fisher stated that adding more impervious surfaces will add to the flooding issues and this area is already at breaking point; and that Bethany Bay a previous development by this Applicant has flooding issues.

The Commission found that Mr. Bill Hauck spoke in opposition to the Application. Mr. Hauck stated that this development will be an eyesore in an area where the homes are well-maintained; that this will not be seasonal living but permanent residents causing more traffic; and that the numbers from DelDOT do not make sense.

The Commission found that Mr. Daryl Wiles spoke in opposition to the Application. Mr. Wiles stated that the people who spoke tonight are not opposed to development, they are opposed to this type of development, the quality of the development and the compatibility of the development with the surrounding communities; that there are no other 42-foot buildings in the area; that it will affect property values in the area; that DelDOT dodged the questions and did not properly respond; and that it is foolish to approve this development without an up to date Traffic Impact Study.

Mr. Torrance confirmed that there are no members of the public in the overflow room.

Mr. Whitehouse confirmed that the live feed and the telephone call in number has been operational throughout the meeting.

The Commission found that Ms. Carole Dougherty spoke in opposition to the Application. Ms. Dougherty stated that she has concerns about the placement of dumpsters and the noise generated by the trucks picking up the trash; that she has concerns about the buffer; and that there are not enough ambulances to handle the current calls and people must wait.

The following people spoke by teleconference in opposition to the Application: Laurie Goodwin Phillips, Matthew Apage, Tracey Bryan, Charles Plis, Patricia Podsiad and Jacqueline Brader. The concerns raised were about the trash, the traffic, the safety issues; flooding, the loss of open space, the effect on wildlife, the overcrowded school district; the infrastructure, out of character of the area, and overdevelopment in this area.

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

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

In relation to Application C/U 2206 Linder & Company, Inc. (Evans Farm), motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Meeting adjourned at 10:40 p.m.

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