

THE MINUTES OF THE REGULAR MEETING OF MARCH 9, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, March 9, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse advised the Commission of the revision to the agenda for the postponement of C/U 2348 TPE DE SU124, LLC per the Applicant's request.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Agenda as revised. Motion carried 4 - 0.

PUBLIC COMMENT

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

OTHER BUSINESS

2021-08 The Knoll

Final Subdivision Plan

This is a Final Subdivision Plan for the establishment of a cluster subdivision to consist of twenty-seven (27) single-family lots, private roads, and open space. At their meeting of Thursday, October 28th, 2021, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the development. The property is located on the east side of Irons Lane (S.C.R. 348). The applicant was approved for a total of thirty-three (33) lots, however, due to certain design requirements, the number of lots has been reduced to twenty-seven (27) being provided. The Final Subdivision Plan complies with the provisions of the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 134-7.00-163.00. Zoning: AR-1 (Agricultural Residential District.) Staff are in receipt of all agency approvals.

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

(2018-20) Tanager Woods Revised Amenities

Revised Amenities Plan

This is a Preliminary Revised Amenities Plan for the existing Tanager Woods Subdivision for the construction of a clubhouse, a multi-use court, a pool, and other site improvements. The revisions are to increase the size of the pool from 2,531 square feet to 3,614 square feet and the pool deck from 6,707 square feet to 11,959 square feet. The property is located on the east side of Fieldfare Lane and the west side of Winona Lane within the subdivision. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-6.00-

85.01. Staff are in receipt of all agency approvals; therefore, the plan may be considered for preliminary and final approval.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Amenities Plan as a preliminary and final. Motion carried 4-0.

Sweet Meadows Riding Academy Preliminary Site Plan (CU 2331)

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of nine (9) 1story cabin/yurt structures for overnight accommodation of a riding academy and other site improvements. This use is supported by Conditional Use No. 2331, which was approved by the Sussex County Council at their meeting of Tuesday, January 10th, 2023, through Ordinance No. 2899. The parcel contains 5.00 acres +/- and is located on the north side of Deer Run Road (S.C.R. 388). The preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel 533-11.00-27.04. Zonin: AR-1 (Agricultural Residential) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

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

First Baptist Church of Lewes

Preliminary Site Plan

This is a Preliminary Site Plan for the First Baptist Church of Lewes for the establishment of a 0.82 acre +/- parking lot for a proposed church building located within the Lewes Municipality and other site improvements. The parcel contains 1.36 acres +/- and is located on the east side of Kings Highway (Rt. 9). The applicant is requesting a waiver to allow for parking to be located within the front setback. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 335-8.00-40.00 & 42.03 (Lewes). Zoning: AR-1 (Agricultural Residential) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Ms. Stevenson questioned if places of worship are considered commercial for the purpose of interconnectivity, as the site is located adjacent to a commercial property; that she would have no issue with the Applicant placing a sign stating No Parking for non-members and she was attempting to establish interconnection for the ability of emergency vehicles to access the properties when needed.

Mr. Whitehouse advised the Commission that it is desirable to have interconnection; that the Ordinance does not require interconnectivity, as the property is not located within a commercial zoning district, as places of worship are permitted by right; that some places of worship are considered a bit more commercial in nature than others and there would be support for interconnection if the Commission should request it.

Mr. Robertson advised the Commission that they do have the ability to impose conditions to site plans.

Ms. Stevenson questioned if the Applicant received approval from the Delaware Byways Program relating to the proposed parking within the front yard setback.

Mx. Lindenberg stated the assigned Planner had been in contact with the Byways Program, who are in support of the current site plan.

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

Lands of Christie M. Smith, Trustee Irrevocable Trust Agreement of W. Eugene Argo

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of an 11.69-acre parcel into three (3) lots and residual lands, with one (1) lot having access off a 50-ft ingress/egress access easement. The proposed lots consist of 0.7645-acres +/-, 0.9556 acres +/-, and 0.8068 acres +/-, while the residual land consists of 9.16-acres +/- . The property is located on the east side of Reynolds Road (S.C.R. 233) and the southwest side of Coastal Highway (Rt. 1). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-7.00-54.00. Zoning: GR (General Residential District). Staff are awaiting agency approvals; if the Commission desires to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

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

Lands of Susie B. Loper Heirs

Preliminary Minor Subdivision off a 30-foot Easement

This is a Preliminary Minor Subdivision Plan for the subdivision of a 4.922 acre +/- parcel of land into two (2) lots and residual lands off a 30-foot easement. Proposed Lot 1 consists of 0.870 acres +/-; Proposed Lot 2 consists of 2.484 acres +/-; and the residual lot consists of 1.568 acres +/- . The property is located on the north corner of the intersection of Benson Road (S.C.R. 216) and Cubbage Pond Road (S.C.R. 214). The Preliminary Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 230-14.00-37.00. Staff are in receipt of all agency approvals and are requesting final approval to be by staff.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 30-ft. easement as a preliminary and final. Motion carried 4-0.

OLD BUSINESS

C/U 2340 Inland Bays Preservation Company, LLC:

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WASTEWATER RECLAMATION TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26.05 ACRES, MORE OR LESS. The property is lying on the northeast side of Banks Road (S.C.R. 298), approximately 400 feet northwest of Green Road (S.C.R. 298A). 911 Address: N/A Tax Parcel: 234-17.00-170.00 (P/O).

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

Ms. Stevenson moved that the Commission recommend approval of C/U 2340 for Inland Bays Preservation Company based on the record and for the following reasons:

1. The Applicant is a public utility regulated by DNREC, the Public Service Commission, and other Federal, State, and Local agencies. The proposed use will be reviewed, regulated, and approved by DNREC and will be designed and constructed in accordance with all other applicable federal, state, and county requirements.
2. The Applicant proposes to use the site for public utility purposes as a water reclamation facility a use that is essential and desirable for the general convenience and welfare of neighboring properties and Sussex County.
3. Inland Bay Preservation Company has applied for Certificates of Public Convenience and Necessity to serve the area and has or will have the tariffs approved by the Public Service Commission.
4. This application is in an appropriate location for a regionalized water reclamation facility to insure treatment for existing and future residents of the surrounding area.
5. The Conditional Use requested will promote the health and safety of the residents of Sussex County and with the conditions placed upon it, will not have an adverse impact on the neighboring properties or community.
6. This recommendation is subject to the following conditions:
 - A. All improvements for collection, treatment, and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Sussex County Engineering Department, if any, and the Delaware Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site, or any modification thereto.
 - B. All equipment needed in the operation of the facility shall be housed indoors with the exception of emergency generators and holding and treatment tanks that may be located on the site. The generators shall be housed in enclosures to reduce noise.
 - C. There shall be forested buffers of at least 30-foot-wide along the eastern and western sides of the property consisting of the existing woodlands which shall not be cut or removed except for normal safety and maintenance purposes. There shall be a 20-foot-wide landscaped buffer along the northern rear of the site, adjacent to the Keastone Bay development.
 - D. One lighted sign shall be permitted, not to exceed 32 square feet in size. The sign shall identify the operator of the facility and shall provide contact information in case of emergency.
 - E. As stated by the Applicant during its presentation, the exterior treatment of the building will be designed with residential-style architectural features and elements.
 - F. Any security lighting shall be screened so that it does not shine onto neighboring properties or County Roads.
 - G. Construction, site work, and deliveries shall only occur on the site between the hours of 7 a.m. and 6 p.m. Monday through Saturday. No Sunday hours for construction will be permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in Spanish and English shall be prominently displayed at the site of the entrance during construction.
 - H. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2340 Inland Bays Preservation Company for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2349 Lessard Builders

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (10 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS. The property is lying on the northwest side and the southeast side of Oak Orchard Road (Rt. 5), approximately 300 feet east of River Road (S.C.R. 312). 911 Address: 32768 Oak Orchard Road, Millsboro. Tax Parcel: 234-35.09-6.00.

The Commission discussed the Application which has been deferred since February 9, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2349 for Lessard Builders but for only six (6) multi-family units in a MR (Medium-Density Residential) District based on the record made during the public hearing and for the following reasons:

1. This application seeks the approval of ten (10) multi-family structures on approximately .84 acres of land. The land is actually separated by a roadway historically used by residents and visitors to the Oak Orchard Area. 10 units is simply too much density on this unusually shaped, small parcel of land that is divided by the roadway. While the roadway splitting the land is not State-owned, the record shows that it has historically been used as a public roadway, and it is the only means of access for several nearby properties.
2. The small roads and tightly packed properties in this area of Oak Orchard cannot support 10 new multi-family units on this site. There was testimony in the record that the required parking alone would adversely affect the neighboring and adjacent properties by squeezing the necessary parking spaces among the adjacent small residential properties.
3. Six new multifamily units in this location will not overburden this property and the area, including nearby roadways. Six units is an appropriate density, and they will improve and redevelop a property that has deteriorated over the years.
4. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” are acceptable here, including medium and high densities when a site is near commercial areas, is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
5. As part of this approval, the issue of access to the roadway connecting the two ends of Oak Orchard Road across this property will be resolved by a dedication of the roadway to public use.
6. With this six-unit limitation, the proposed development will not have an adverse impact on the neighboring properties or community.
7. With the six units, the project will not have an adverse impact upon traffic or roadways.
8. The development will be served by central sewer provided by Sussex County.
9. The development will be served by central water.
10. This recommendation is subject to the following conditions:
 - A. The maximum number of residential units shall be six (6).

- B. The developer and then the condominium association shall be responsible for the perpetual maintenance of the project's stormwater management facilities, erosion, and sedimentation control facilities, and other common areas.
- C. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer as required by DelDOT.
- D. The Final Site Plan shall dedicate the roadway across this site connecting the two ends of Oak Orchard Road to public use.
- E. At least one parking space for each unit shall be located on the riverside portion of the property, whether enclosed in a garage or under the building, or in a driveway or outdoor parking area. None of the parking shall be located within a setback area.
- F. The trash receptacles shall be standard roll-out residential containers assigned to the six (6) units. They shall be stored in an enclosed area on the area of this site where the building is located. No dumpster shall be permitted.
- G. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- H. The project shall be served by central water to provide drinking water and fire protection.
- I. Construction activities, including site work and deliveries, shall only occur between 7:30 am and 7:00 pm Monday through Friday, and between 8:00 am and 2:00 pm on Saturdays. There shall be no construction activities at the site on Sundays. A 24-inch by 36-inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- J. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- K. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval for C/U 2349 Lessard Builders for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/Z 2003 KAR FARMING COMPANY, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 167 ACRES, MORE OR LESS. The properties are lying on the west side of Sussex Highway (Route 13) and the north side of E. Newton Road (S.C.R. 584). 911 Address: N/A. Tax Map Parcel: 530-16.00-11.00 & 12.00.

The Commission discussed the Application which had been deferred since February 23rd, 2023.

Mr. Whitehouse read Mr. Hopkins's prepared motion into the record per Mr. Hopkins's request.

Mr. Hopkins moved that the Commission recommend approval of C/Z 2003 for KAR Farming Company, LLC, for a Change in Zone from AR-1 to HI-1 based upon the record made during the public hearing and for the following reasons:

1. In the 2019 Sussex County Comprehensive Plan update, this property was identified as being within the Industrial Area according to the Plan's Future Land Use Map. The properties to the west and south are designated as being within either an Industrial Area or the Developing Area. The properties to the east are designated as being within the Developing Area. The Industrial Area is a Growth Area and Table 4.5-2 titled "Zoning Districts Applicable to Future Land Use Categories" identifies HI-1 (Heavy Industrial District) as an applicable zoning district for the Industrial Area.
2. The description of the Industrial Area within Chapter 4 of the Comprehensive Plan describes this Area as containing "lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space. . .[l]arge, more intensive stand-alone industrial uses should also be directed to these areas."
3. This site is in on a property that has frontage along East Newton Road in close proximity to Route 13 and near a rail line. This is an appropriate location for HI-1 Zoning.
4. The purpose of the HI-1 Heavy Industrial District is to "provide for a variety of industrial operations. . .to preserve the land in the district for industrial use and to exclude new residential or commercial development, except for certain specified uses deemed appropriate adjuncts to industrial operations." The intended use of the property (feed mill) is consistent with these permitted uses.
5. There are industrially and commercially zoned properties in the area and there are a variety of uses nearby, including a large grain operation, an agricultural supply business, and a new manufacturing company. The proposed HI-1 area is compatible with the surrounding zoning and uses.
6. The nearby railroad is operated by the Delmarva Central Railroad Company, which connects to other rail service providers. The rezoning to HI-1 will promote additional economic opportunities for rail service in Sussex County. It is also in furtherance of Goal 13.5 of the Comprehensive Plan to "[f]acilitate freight movement throughout Sussex County".
7. It has been stated that the rezoning to HI-1 is needed to construct a feed mill on the property with rail access. This promotes the continued vitality of agricultural operations in Sussex County, which is a goal stated throughout Sussex County's Comprehensive Plan. This rezoning is in furtherance of that goal.
8. This rezoning to HI-1 promotes transportation goals in the Sussex County Land Use Plan, which states in Section 13.2.2 that "The County's goods movement (freight) network is an integral component of the transportation network as well as the economy." However, "the main element of the freight network is the roadway system, which carries trucks (motor freight)." One means of reducing truck impacts is to shift more freight to rail, although opportunities to do that are limited. This site presents an opportunity to achieve this goal.
9. No parties appeared in direct opposition to the rezoning.
10. The proposed project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County and is consistent with the County's goals of promoting agribusiness and, specifically, Goal 9.3 of the Economic Development Chapter of the Comprehensive Plan, which is to "[p]reserve and encourage the

expansion of the agriculture industry, forestry industry, and other similar industries in the County.”

11. Any future development of the property will require site plan review by the Sussex County Planning & Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 2003 KAR Farming Company, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2371 Georgetown Business Plaza, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BUSINESS PARK TO INCLUDE WAREHOUSES AND OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 22.29 ACRES, MORE OR LESS. The property is lying on the southwest side of Prettyman road (S.C.R. 254) approximately 0.52-miles northwest of Lewes Georgetown Highway (Rt. 9). 911 Address: N/A. Tax Map Parcel: 235-30.00-6.00.

The Commission discussed the Application which had been deferred since February 23rd, 2023.

Ms. Wingate moved that the Commission to recommend approval of C/U 2371 for Georgetown Business Plaza, LLC, for a business park to include warehouses and office buildings based upon the record made during the public hearing and for the following reasons:

1. The site is located along Route 9, which is classified as a Principal Arterial Roadway in Sussex County. This use is appropriate for this location. This Application seeks approval of two medical or office buildings closest to Route 9 with warehouse space in buildings behind them.
2. The use is situated on a part of a larger 22.285-acre parcel of land. This conditional use shall only be located on the eastern portion of the site as depicted during the public hearing. The remainder of the site shall not be developed without an additional public hearing.
3. There are other small businesses and structures in the area including a similar project nearby approved as Conditional Use #2290. It is also near the Route 9 and Harbeson Road intersection. There are various zoning districts in this area, including MR, C-1, CR-1, and C-2. With the limitations placed upon it, this use is compatible with the surroundings.
4. DELDOT has stated that traffic generated by the proposed use will be minor and will not have a negative impact on the neighboring properties or roadways.
5. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County. It is also a location along Route 9 that is convenient for residents and small businesses.
6. The property is located in the Low Density Area according to the Sussex County Comprehensive Plan. The conditional use is consistent with the Plan’s guidelines for the Low Density Area, since it will provide convenient areas for businesses addressing the needs of homeowners and property owners in this area of Sussex County.
7. The site is served by central water and sewer.
8. This recommendation is subject to the following conditions:

- A. The project shall consist of 2 medical or professional office buildings fronting on Route 9 and 7 warehouse buildings behind them.
- B. No businesses that primarily involve or are similar to the following uses shall be permitted: retail; gyms or fitness centers; breweries or brewpubs; or restaurants and food service.
- C. This conditional use is limited to the eastern portion of the site as depicted during the public hearing. The remainder of the site shall not be developed without an additional public hearing. The Preliminary and Final site plans shall clearly depict limits of this conditional use.
- D. There shall not be any outside storage, including boats, construction materials, RVs, or equipment within the site.
- E. No vehicle repair or fueling operations shall be performed on-site.
- F. There shall be no manufacturing on the site, and any contractor work shall only occur indoors.
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- H. A 20-foot landscaped buffer shall be installed along the perimeter of this project. The buffer shall comply with the planting requirements for the Forested and/or Landscaped Buffer Strip contained in Section 99-5 of the Sussex County Code.
- I. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.
- J. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- K. There shall be an adequate parking area for all tenants and employees as required by Code. The parking areas shall be clearly shown on the Final Site Plan and on the site itself. There shall be no parking within the property's setbacks.
- L. Signage for the Property shall comply with the following requirements: One indirectly illuminated on-premises ground sign shall be permitted along Route 9, not to exceed 64 square feet of sign area per side; and one On-premises wall, illuminated awning, marquee, or projecting sign with a total sign area of 32 square feet shall be permitted with respect to each building.
- M. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall also identify all "Limits of Disturbance" within the Property. These "Limits of Disturbance" shall be clearly marked on the Property itself.
- N. There shall not be any access to this site from Prettyman Road.
- O. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- P. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2371 Georgetown Business Plaza, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 17.26 ACRES, MORE OR LESS.

The property is lying on the north side of Boyce Road (S.C.R. 547), approximately 0.15 mile east of Neals School Road (S.C.R. 553). 911 Address: 4973 Boyce Road, Seaford. Tax Map Parcel: 531-9.00-7.03.

The Commission discussed the Application which had been deferred since February 23rd, 2023.

Mr. Hopkins moved that the Commission recommend approval of C/U 2366 for Impact Life, Inc. for a group home for more than ten (10) people based upon the record made during the public hearing and for the following reasons:

1. This application seeks a residential recovery home for women recovering from drug addiction along with their children.
2. The Sussex County Zoning Code permits “A group residential facility licensed and approved by the appropriate state agencies serving 10 or fewer persons with disabilities on a twenty-four-hour-per-day basis”. The Applicant is seeking a residential recovery home for up to 13 women, plus their children.
3. It is undisputed that there is a serious opioid and drug addiction crisis in Sussex County. This Applicant seeks to provide decent and safe housing in a structured home environment for women who are successfully addressing their addiction. It will not be a detox or rehabilitation facility. Instead, it will provide transitional housing for women and their children after they have completed their detox and/or rehabilitation programs.
4. There was testimony in the record that this program will be structured, with programming and 24-hour on-site supervision. The organization that will operate the home is licensed and has prior experience running other residential facilities in Delaware, including ones in Seaford, Milford, and New Castle County.
5. It is a Goal throughout the Sussex County Comprehensive Plan to provide safe and decent housing for Sussex County residents, including group homes. This application is in furtherance of that Goal.
6. The Delaware State Housing Authority, or DSHA, has provided its support for this Application noting that Sussex County has one of the highest opioid overdose rates in Delaware and that Delaware has one of the highest per capita overdose rates in the United States. As a result, the DSHA has stated that it is critical for the state and county to support housing initiatives such as this one to address this crisis.
7. This site is an existing home on 17 acres of land in a rural area of Sussex County. It will maintain its residential and agricultural character. This is an appropriate location for this type of use, and the acreage will allow the residents and their children to participate in agricultural activities on the property.
8. There is no compelling evidence in the record that the use will have a negative effect on area roadways or nearby properties.
9. This use satisfies the purpose of a conditional use under our Sussex County Zoning Code. Because it addresses the serious opioid crisis in Sussex County, it has a public or semipublic character and is essential and desirable for the general convenience and welfare of Sussex County and its residents.

10. This recommendation is subject to the following conditions:

- A. The property shall be operated as a residential recovery home for women and their children. There shall be no more than 13 adults, in addition to resident supervisors, living in the home at any one time. This number does not include the children of the women who reside in the home.
- B. The home shall not be used as a detoxification facility.
- C. The home shall be staffed by qualified supervisors at all times.
- D. The home shall maintain its residential appearance all times.
- E. The home shall be operated in accordance with all federal, state, and county requirements governing the use as a residential recovery home.
- F. The use of the home shall comply with all of the standard state agency requirements that may apply, including, but not limited to those mandated by DelDOT, DNREC, the Sussex Conservation District, and the State Fire Marshall's Office.
- G. There shall be sufficient parking on the site for the use. The parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.
- H. There shall be a curfew between 8:00 pm and 5:30 am for all residents of the facility.
- I. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- J. Any dumpsters or trash receptacles shall be enclosed and screened from the view of neighboring properties or roadways.
- K. The Final Site Plan shall not be issued without confirmation that DNREC has approved a septic system that is suitable for the number of residents who will reside on this property.
- L. The failure to comply with any of these conditions may be grounds for the termination of this Conditional Use.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2366 IMPACT Life, Inc. for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2367 AtTack Addiction Foundation

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.86 ACRES, MORE OR LESS. The property is lying on the east side of Hurdle Ditch Road (S.C.R. 290), approximately 0.28 mile north of Hollyville Road (Rt. 48). 911 Address: 22703 Hurdle Ditch Road, Harbeson. Tax Map Parcel: 234-10.00-69.01.

The Commission discussed the Application which had been deferred since February 23rd, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2367 for AtTack Addiction Foundation for a group home of more than ten (10) people based upon the record made during the public hearing and for the following reasons:

1. This application seeks a residential recovery home for men recovering from drug addiction.
2. The Sussex County Zoning Code permits “A group residential facility licensed and approved by the appropriate state agencies serving 10 or fewer persons with disabilities on a twenty-four-hour-per-day basis”. The Applicant is seeking a residential recovery home for up to 16 men.
3. It is undisputed that there is a serious opioid and drug addiction crisis in Sussex County. This Applicant seeks to provide decent and safe housing in a structured home environment for men who are successfully addressing their addiction. It will not be a detox or rehabilitation facility. Instead, it will provide transitional housing for men after they have completed their detox and/or rehabilitation programs.
4. There was testimony in the record that this program will be structured, with programming and 24-hour on-site supervision. The organization that will operate the home owns three other recovery residences. This one, like the others, will be operated by Impact Life, Inc., which itself has experience operating similar facilities throughout Delaware.
5. It is a Goal throughout the Sussex County Comprehensive Plan to provide safe and decent housing for Sussex County residents, including group homes. This application is in furtherance of that Goal.
6. The Delaware State Housing Authority, or DSHA, has provided its support for this Application noting that Sussex County has one of the highest opioid overdose rates in Delaware and that Delaware has one of the highest per capita overdose rates in the United States. As a result, the DSHA has stated that it is critical for the state and county to support housing initiatives such as this one to address this crisis.
7. This site is a large lot with an existing residential home that is owned by the Applicant. It will maintain its residential character.
8. There is no compelling evidence in the record that the use will have a negative effect on area roadways or nearby properties. The concerns raised by neighboring property owners will also be mitigated by the conditions imposed upon this conditional use.
9. This use satisfies the purpose of a conditional use under our Sussex County Zoning Code. Because it addresses the serious opioid crisis in Sussex County, it has a public or semipublic character and is essential and desirable for the general convenience and welfare of Sussex County and its residents.
10. This recommendation is subject to the following conditions:
 - A. The property shall be operated as a residential recovery home for men. There shall be no more than sixteen (16) men, in addition to resident supervisors, living in the home at any one time.
 - B. The property shall not be operated as a detoxification facility.
 - C. The home shall be staffed by qualified supervisors at all times.
 - D. The home shall maintain its residential appearance all times.
 - E. There shall be a curfew between 10:00 pm and 5:30 am for all residents of the facility.
 - F. The home shall be operated in accordance with all Federal, State, and County requirements governing the use as a residential recovery home.

- G. The use of the home shall comply with all of the standard State agency requirements that may apply, including, but not limited to those mandated by DelDOT, DNREC, the Sussex Conservation District, and the State Fire Marshall's Office.
- H. There shall be sufficient parking on the site for the use. The parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.
- I. With the exception of the property boundary along Hurdle Ditch Road, the perimeter of the site shall be fenced with residential-style fencing to screen it from the view of neighboring properties.
- J. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- K. Any dumpsters or trash receptacles shall be enclosed and screened from the view of neighboring properties or roadways.
- L. The Final Site Plan shall not be issued without confirmation that DNREC has approved a septic system that is suitable for the number of residents who will reside on this property.
- M. The failure to comply with any of these conditions may be grounds for the termination of this Conditional Use.
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2367 AtTack Addiction Foundation, for the reasons and conditions stated in the motion. Motion carried 4-0.

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

PUBLIC HEARINGS

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

C/U 2355 Dan Velez and Maricryst Birao

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

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter from Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Ms. Maricryst Birao spoke on behalf of her Application. Ms. Birao stated that she is one of the owners of the property; that the request is to use the property for their physical therapy office; that currently, they operate a physical therapy office at a location in Selbyville, and that

they intend to relocate the business to the subject property, located on Lighthouse Rd.

Ms. Wingate questioned if the proposed use was for a physical therapy office and storage units; that she understood the plan to have four additional units; that she questioned what types of businesses are proposed within those units; that she questioned if there would be any retail businesses; that the site is not large, which created some concern relating to parking; that she questioned if the parking requirements are able to be met for the proposed use, how many people work within the physical therapy office, the number of intended clients per day, the number of parking spaces required for the number of proposed units, the hours of operations, and if the proposed hours would be the same for the additional units.

Mr. Whitehouse advised the Commission that for standard medical and dental facilities, the Code requires one parking space for every two employees, plus four parking spaces per doctor or dentist.

Ms. Stevenson questioned if a sign was desired on the property and if buffers from adjacent properties would be required.

Ms. Wingate stated the adjacent property to the rear is a storage yard for Lighthouse Lakes.

Mr. Hopkins stated the proposed lot is small and it seemed that a lot was proposed for the site.

Mr. Robertson stated Ms. Birao is requesting five units to be located on the site; that if the Commission and County Council were to approve the request, the Applicant would still be required to get approvals from DelDOT, DNREC, Sussex Conservation District, and the State Fire Marshal; that he suggested the Applicant speak with a land use attorney or engineer, who may be able to help the Applicant present the details of the Application; that the decisions of the Commission and County Council are based on the record made; that the Applicant has the obligation to establish a record for the requested use, and the reasons the Commission and County Council should approve the request; that the request is not for a simple home occupation type of business; that the Application request is fairly complex and he suggested the Applicant give it some thought between the current public hearing and the scheduled public hearing before County Council.

Ms. Birao stated they had inquired about the property's potential to provide units for other businesses; that they were told three to four additional units could be provided; that they intend to have the units available for rent; that retail businesses were not intended for the additional units; that professional businesses were the intended business for the additional units; that one of the units would be for the physical therapy office; that she imagined the other units being for an accounting firm or other professional services; that a site plan was submitted; that there are five employees for the physical therapy office; that some of the employees are part-time; that on a regular basis, there are three people on the site for the physical therapy office; that clients arrive every hour; that some clients are dropped off to the site; that they see approximately four clients per hour based on her current availability; that hours of operation would be Monday through Friday, 8:00 am until 5:00 pm; that Saturday hours would be by appointment; that typically they are closed on Saturdays and Sundays; that the additional units would have the same hours of operation if the hours are found to be typical for that business' trade; that they would like a sign for the property, as permitted by Code; that they would be flexible with any number of units approved; that currently their main request is for the physical therapy office to be located at the site and she understood Mr. Robertson's suggestions.

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

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

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

In relation to C/U 2355 Dan Velez and Maricryst Birao. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

C/U 2420 Vance Daniels

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

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that one letter of no objection and two letters of opposition had been received for the Application.

Mr. Whitehouse advised the Commission that the Application was submitted as a result of an issued violation; that the Applicant had been very cooperative with staff; that upon inspection of the site, staff found that vehicle storage was located outside of the existing C-1 (General Commercial) zoning of the property; that the front portion of the property is zoned C-1 (General Commercial); that the rear portion of the site is located GR (General Residential); that storage of vehicles is not permitted within GR Zoning; that after discussions with the Applicant, the staff decided the best path forward would be to request a Conditional Use, which would allow the vehicle storage to remain within the GR portion of the site and the application was expedited as the Applicant's use is already up and running.

The Commission found that Mr. Vance Daniels spoke on behalf of his Application. Mr. Daniels stated that he is the owner of Griff Daniels Autobody and Paint Shop; that he has been in the business for over 30 years; that he was before the Commission because someone filed a complaint against him; that the violation was for the storage of vehicles on property not zoned for commercial; that when he purchased the property he was under the impression the property was all commercial; that he was surprised the property is split zoned between C-1 (General Commercial) and GR (General Residential) and he was very confused at how everything came about.

Chairman Wheatley stated he understood where Mr. Daniels would have assumed the property was entirely zoned for commercial use and advised the Commission that the business use located on the C-1 portion of the property is permitted without any action by the Commission other than site plan review.

Ms. Stevenson questioned how many years Mr. Daniels had performed business at the site; that she questioned what Mr. Daniels's business is, what work he performs on the site, the number of vehicles currently being stored on the site, and what Mr. Daniels believed to be a reasonable amount of time for the vehicles to remain on the property.

Mr. Robertson stated according to the aerial photos, the vehicles were not stored at the site a year ago and he questioned what changed in the business that now requires the storage of vehicles.

Ms. Wingate questioned if the intention was to fix the cars and remove them from the site within a certain time frame and if vehicle work is performed outside or inside a building.

Chairman Wheatley stated the Commission does not want to see the site become an auto salvage operation; that the Commission does have the ability to place conditions and a potential condition may be the length of time permitted for vehicles to be stored on the property. Chairman Wheatley questioned if all the vehicles were being stored with the intention to be worked on, or are the vehicles were only being stored on the property.

Mr. Hopkins questioned the number of vehicles stored on the site when Mr. Daniels was only performing the body and paint work before the other individual began storing vehicles on the site; that he questioned if the property had always been one property or if the property was combined from two properties, if Mr. Daniels changed the zoning of the property and he questioned if Mr. Daniels knew if the other adjacent properties were in support or opposition of the proposed use.

Mx. Lindenberg stated there was a Change of Zone approved for the property in 1985, which changed to existing C-1 portion of the property, from GR (General Residential) to C-1 (General Commercial), and in 1986, the rear, GR (General Residential) portion of the property was combined to the existing property.

Mr. Daniels stated he had performed business, on the commercial portion of the property, since 1985; that his body shop is located on the C-1 portion of the property; that his business is an autobody and paint shop; that a gentleman stores cars at his site; that he also provided work to the stored cars when he is able; that he is a small business man trying to make a living; that he desired to comply with Code; that he requested to be permitted to keep the vehicles stored on the GR portion of the site; that he had been working with an individual who brings the vehicles to the site; that this had transpired over the past six to seven months; that a timeframe is hard to provide as he currently has a lot of business; that the goal is to fix the cars and remove them; that he has no intention to create a junk yard; that he cannot speak to how long the vehicles will be required to be at the site; that the individual he works with sells vehicles; that the individual brings the vehicles to the site to be stored; that some vehicles get sold; that other vehicles are worked on by Mr. Daniels; that he does provide work to many of the vehicles; that any guidelines the Commission gives Mr. Daniels, he will comply with; that his work to the vehicles is performed within the body shop; that he does not change vehicle fluids; that he keeps paint stored in a container; that the used paint containers are placed in a specific container and disposed of properly; that currently the property is storing 25 to 30 vehicles; that he could not provide a reasonable amount of time for the vehicles to be stored on the property; that he was only trying to help individuals; that individuals will bring and leave a vehicle, despite the fact he is unable to work on the vehicle at that time; that he worked for i.g. Burton for 21 years; that individuals know this, and choose to leave their vehicles until he can provide the work for them; that before the individual began storing vehicles, he would have approximately ten vehicles around the shop; that he always believed the combined properties were zoned for commercial, as he would only receive one property tax bill; that only five people live along Daniels Rd.; that not everyone along the road is related to him; that individuals had recently moved to Daniels Rd. and he never had experienced any issues until the individuals moved to the area.

Chairman Wheatley stated with the storage of vehicles is creating a separate business from the proposed auto body and paint business; that the Commission's expectation would be that the vehicles are only being stored for the purpose of having an auto body or paint work done to them; that the vehicles cannot be stored on the property for a vehicle sales operation elsewhere; that he is afraid individuals may be leaving their vehicles on Mr. Daniels' property because they do not want the vehicle stored on their

property; that this circumstance has created a problem for the adjacent neighbors, and he fully understands how Mr. Daniels would have been under the impression both properties were zoned commercial.

Mr. Whitehouse questioned how many of the vehicles being stored are untagged, as the number could be of relevance to the Commission when constructing conditions.

Mr. Daniels stated he was uncertain how many untagged vehicles were currently being stored on the property.

The Commission found that one person was present in support of the Application.

Mr. Joe Larrimore spoke in support of the Application. Mr. Larrimore stated that he did not initially attend the meeting to speak on behalf of the Application; that he has known Mr. Daniels for over 50 years; that Mr. Daniels is hardworking and honest; that last week, he and his wife were traveling Daniels Rd.; that his wife was complimenting how nice and orderly the vehicles were stored on the property; that typically, vehicles are stored with no organization and he is in favor of the Application.

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

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

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

In relation to C/U 2420 Vance Daniels. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

C/U 2346 TPE DE SU114, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS. The property is lying on the north side of Dorothy Road (Rt. 64) and the west side of Sussex Highway (Rt. 13). 911 Address: N/A. Tax Map Parcel: 332-7.00-19.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Exhibit Booklet, the Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that one mail return and no comments were received for the Application.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Application; that also present was Mr. Jordan Belknap, Director of Development with TurningPoint Energy. Mr. Falkowski stated that the property is located in Laurel, along Dorothy Rd.; that the proposed use is for a community solar project; that the property is zoned AR-1 (Agricultural Residential); that half of the site is in existing agricultural use; that the remaining half of the site is comprised of existing woodlands; that the existing woodlands are intended to remain; that the solar array area is comprised of just over 20 acres; that when including the proposed buffers the solar array area is comprised of approximately 27 acres of the site; that the total parcel area is just under 74 acres; that they have proposed a 25-ft wide landscaped buffer between the site and adjacent residential properties; that

the 25-ft wide landscape buffer will be comprised of 12 trees and 15 understory shrubs, per 100 linear feet of the buffer; that the landscape buffer will surround the site until it ties into the existing woodlands on the rear of the site; that additionally, they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property; that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; Mr. Belnap did host and attend a community outreach meeting on February 8th, 2023, which was held at the Laurel Fire Department; that the project would not create an increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents; that the proposed project does promote Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy and the proposed project will have no adverse impact on any of the neighboring properties.

The Commission found that Mr. Jordan Belnap spoke on behalf of the Application. Mr. Belnap stated that TurningPoint Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that TurningPoint Energy focuses on developing community solar energy facilities; that TurningPoint believes their projects should create economic, environmental and community value; that their business creates economic value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17th, 2021, Senate Bill 2 was signed into the law, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may not be well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life;

that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that TurningPoint Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms, and the solar farm will be a benefit to Sussex County.

Ms. Wingate questioned the location of the proposed access for maintenance vehicles, if the seven-foot fence was proposed around the entire perimeter of the property, and if the pollinator mixed seed will be required to be maintained and cut.

Ms. Stevenson questioned if any of the solar projects had completed their life span to the point of decommissioning and if a bond was set in place to provide financial security for the project.

Mr. Hopkins questioned if sheep were proposed to reside at the site.

Mr. Jon Falkowski stated there is an access road to the west of the property, along Dorothy Rd.; that the access road leads to the location of the inverters, which will be placed away from the residential properties; that the seven-foot chain-link fence is proposed around the entire perimeter of the site; that the fencing is reflected as a green line on the Conceptual Site Plan; that the fence is proposed to be located behind the 25-ft. landscape buffer; that there will be an additional interior buffer before the placement of the solar arrays, and the site would have a schedule in place for the maintenance of the grass.

Mr. Belnap stated that TurningPoint Energy has a 25-year lease on all their solar projects; that none of their solar projects had yet reached the end of their operational lives, therefore project decommissioning had not yet been performed; that they understand financial security had been a part of previous solar project conditions; that if the Application were approved, they would provide financial security for the decommissioning of the project and they are not proposing sheep to reside on the site.

The Commission found there were two people present in the room who wished to speak in support of the Application.

Mr. Jeff Seemans spoke in support of the Application. Mr. Seemans stated that he intended to speak on a different Application; that he is a current resident in Milton; that conceptually he approved of the proposed use of a solar farm; that he felt solar is the way of the future, relating to energy supply; that the project will hopefully allow Sussex County to ween off of fossil fuels; that he understood half of the site to be comprised of existing woodlands; that he questioned if the Applicant had any plan to preserve the remaining woods, or proffering a conservation easement toward the wooded portion; that no one knows if the solar project would expand, requiring the woods to be cut down; that the Commission is not aware of the leasing conditions; that he questioned if the Applicant is obligated to preserve the woods for the remainder of the lease and he questioned if there was any intention of expanding the project in the future.

Chairman Wheatley stated he understood the property is being leased by TurningPoint Energy, which would not allow them permission to proffer a conservation easement.

Mr. Robertson stated the Commission is not aware of the lease terms; that the Applicant has provided a site plan, proffering the specified area of the property; that if the Applicant wished to expand and/or change the site plan, it would require the Applicant to submit an amended site plan to the Commission; that in doing so, it most likely would trigger an additional public hearing; that the Commission is dealing with the lease-hold tenant of the property; that the current property owner could cut the trees down and

it would have no relation to the subject Conditional Use.

Chairman Wheatley granted the Applicant the ability to provide comments if desired but advised the Applicant it is not required as the question is beyond the scope of the proposed Conditional Use.

Mr. Belnap and Mr. Jon Falkowski did not provide any additional comments.

Mr. Ed Markiewicz spoke in support of the Application. Mr. Markiewicz stated that he resides across the street from the project with the Little Acres community; that many people within the community already have solar systems installed on their homes; that he had questions on how the project provides financial credit to residents; that he questioned why the project would need the woodland area and he supported the Application as he would rather see a solar farm than a Royal Farms.

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

Mr. Randall Wood spoke in opposition to the Application. Mr. Wood stated that he had resided along Dorothy Rd. for the past 25 years; that during that time he had the view of a beautiful field; that he had concerns about what view will now be seen; that he questioned if he will be seeing a landscaped buffer or a prison-style fence across the street and he questioned how long the landscaping will take to mature.

Mr. Falowski stated Mr. Wood would be looking at the landscape buffer; that the landscape buffer is comprised of 12 evergreen trees and 15 shrubs per every 100 linear feet; that depending on the width of Mr. Wood's lot he could be looking at 12 to 24 evergreen trees, with 15 to 30 shrubs, which would make up the landscape buffer; that the trees will start as two and a half inch caliber trees, being a minimum of seven to nine feet; that Sussex County does have landscape buffer requirements, relating to minimum tree sizes, which the buffer must comply with; that the trees will take time to grow into full maturity; that the planted trees will be a good size; that the trees will not be saplings and he cannot provide an exact growth rate.

Chairman Wheatley stated the Commission has the authority to require the placement of any tree(s) that may die within the buffer areas and that the Applicant is required to maintain the landscape buffer as it is required by the Code.

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

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

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

In relation to C/U 2346 TPE DE SU114, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

C/U 2347 TPE DE SU94, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS. The property is lying on the east side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of the intersection of

Haflinger Road (S.C.R. 625). 911 Address: N/A. Tax Map Parcel: 230-12.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Exhibit Booklet, the Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission zero comments were received for the Application.

Chairman Wheatley granted permission to include the testimony provided from the public hearing for C/U 2346 TPE DE SU114, LLC, to be incorporated into the public hearing for C/U 2347 TPE DE SU94, LLC, as requested by the Applicant, as the two applications had substantial similarities in their proposed uses as solar farms.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Application; that also present was Mr. Jordan Belknap, Director of Development with TurningPoint Energy. Mr. Falkowski stated that there were not many differentiators between the previous solar project application and the subject Application; that the subject site is located in Lincoln, on a parcel comprised of 41 acres; that the portion proposed for the solar project is comprised of 18 acres; that they have modified the solar array layout from what was initially submitted; that the modification came after discussions with the property owner, to avoid an existing irrigation pivot, located at the center of the site; that by avoiding the pivot it would allow existing full irrigation and farming operations to continue on the site; that the site has maintenance accesses along two roads, being N Old State Rd. and Lofland Dr.; that they will seek approval from DelDOT for entrance permits; that the site is mostly surrounded by agricultural uses, therefore they are not proposing a landscape buffer on the site; that they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property; that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; that Mr. Belnap did host and attend a community outreach meeting on February 7th, 2023; that the project will not create any increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated that there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that a seven foot chain-link fence is proposed to surround the site; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents; that the proposed project does promote Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy and the proposed project will have no adverse impact on any of the neighboring properties.

Chairman Wheatley questioned if the intention is to provide a Conditional Use for the entire acreage of the site or to provide a Conditional Use to only the boundary of the solar arrays.

Mr. Whitehouse advised the Commission that staff typically place the total acreage within the advertised short title; that on some previous solar farm applications, staff had sought to clarify the short title to the acreage proposed for the use, and staff, in an abundance of caution, always use the larger amount of acreage for the legal advertisement.

The Commission found Mr. Jordan Belnap spoke on behalf of the Application. Mr. Belnap stated that TurningPoint Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that TurningPoint Energy focuses on developing community solar energy facilities; that TurningPoint believes their projects should create economic, environmental and community value; that their business creates economic value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17th, 2021, Senate Bill 2 was signed into the law, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may be not well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life; that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that TurningPoint Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms, and the solar farm will be a benefit to Sussex County.

Mr. Hopkins questioned what type of fencing was proposed for the property; that he expressed concern that a buffer was not proposed relating to the circumstance the property would be purchased for residential use in the future.

Mr. Falkowski stated the proposed fence would be a chain-link fence and the proposed height is seven feet, as any height above that would require a variance.

The Commission found there was one person present in the room who wished to speak in support of the Application.

Mr. Collin Ennis spoke in support of the Application. Mr. Ennis stated he represented the Ennis family who are the owners of the proposed property; that also present were his grandmother and his uncle; that his father, as well as other family members were present via teleconference; that the proposed land had been in the Ennis family for generations; that his great grandfather, Mr. Woodrow Morgan, was a farmer, an entrepreneur, and a community leader; that his great grandfather farmed the land, as well as ran a tractor service business, located in Lincoln, for many years; that his great grandfather was the Sussex

County Register of Wills in the 1950s and 1960s; that the land was passed to his grandmother, Ms. Joyce Ennis; that the property had been held within a family trust in the past few years; that for the past 40 years, his grandmother had worked to keep the land in the family, using the land for the values that the family holds; that Ms. Ennis' three sons had spent their summers growing up alongside Mr. Morgan on the farm, embodying Mr. Morgan's love for tinkering; that his father, Mr. Randy Ennis, owns a technology company, Response Computer Group, located in Milford; that his uncle, Mr. Kurt Ennis, is a Lead Programmer for Response Computer Group; that he, himself, currently works for Response Computer Group as the Leader of Operations; that his uncle, Mr. Brian Ennis, had been a mechanic and team leader for DeIDOT, DART and the City of Dover; that all three have constructed gardens at their homes, where they farm on a small scale; that the next generation, being his generation, are in the early stages of their careers, where they are pursuing passions in technology and horticulture; that they hold careers as a Landscaper with Baywoods, Mechanical Service Education and medical positions within Sussex County; that they were all driven on their career paths by the core values the family shares; that the land had been used for farming for generations; that when the opportunity came to develop a portion of the land for solar energy and green energy production, they were enticed by the ability to keep the land for farming purposes currently and in the future; that once the project life cycle is complete, they would be able to farm the property once again; that the undercover under the panels will not be rocks, as it appears in other locations; that the family performed due diligence with other companies; that they understood the success record that TurningPoint Energy had in the past, in working with land owners and the community to ensure the projects are a success; that the family believed the proposed use would be a great use of the land, by performing an important service for the community; that the proposed project will generate enough power for roughly 300 homes; that the newest generation of the family has started; that his daughters will be attending Kindergarten down the street from the property and he is looking forward to passing the family farm, showing his children the blend of technology and farming that the family has had.

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

Ms. Deborah Morgan spoke in opposition to the Application. Ms. Morgan stated that she owns the property adjacent to the Ennis property; that much like the Ennis family, her husband's family had been farming for 100 years; that she is not opposed to clean energy in any respect; that she felt it is inappropriate to take productive agricultural land to use for a solar project; that the proposed use is not a farm, it is a project; that her husband rented the property from Ms. Ennis for many years; that once her husband retired, someone else began to till the land on their behalf; that her husband had since passed away; that the proposed use will interfere with her irrigation systems, which were placed on the property with Ms. Ennis's approval; that TurningPoint Energy had promised her they would address her concerns relating to the irrigation; that the proposed project will impact the farmer who is currently tilling the land, by impacting his total tillable acreage and as a result the farmer's income, as well as her income will be impacted.

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

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

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

In relation to C/U 2347 TPE DE SU94, LLC. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

Recess

4:54 pm – 5:18 pm

2022-04 Twin Masts

A cluster subdivision to divide 132.90 acres +/- into two hundred and forty-nine (249) single-family lots to be located on certain parcels of land lying and being in Broad Kill Hundred, Sussex County. The properties are lying on the west side of Coastal Highway (Route 1) and on the north side of Round Pole Bridge Road (S.C.R. 257). 911 Address: N/A. Tax Map Parcels: 235-16.00-68.00 & 69.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's preliminary subdivision plan, a copy of the Applicant's exhibit booklet, a copy of the PLUS comments and the Applicant's response to the PLUS comments, a copy of the staff review letter and the Applicant's response to the staff review letter, a copy of the Applicant's Traffic Impact Study (TIS) and DelDOT response to that TIS, a copy of the Applicant's Chapter 99-9C response, which included in the Applicant's exhibit book there is a Artesian Resources, Applicant's Geotechnical report along with a jurisdictional determination letter, and a FAA letter which is a determination as to no hazards, a copy of the Technical Advisory Committee (TAC) responses including a letter from the Sussex County Engineering Department, a copy of a letter received from the U.S. Fish and Wildlife, a copy of a letter received from DNREC – Division of Watershed Stewardship, a copy of a letter received from Delaware Electric Co-op, a letter received from the Delaware Forest Service, a letter received from the Delaware Department of Agriculture, a letter from the Manager of the Delaware Coastal Airport, and there are 79 public comments submitted into the record. Mr. Whitehouse noted that approximately 25 of those comments were received in the last 24 hours and that they have all been entered into the record and into the electronic document management system.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Twin Masts, LLC; that the team included Jim Eriksen, P.E. with Solutions, Betty Tustin, P.E. & P.T.O.E. with the Traffic Group (not present), Megan Connor and Hal Stewart on behalf of the Applicant, and Ed Launay. Professional Wetland Scientist. Ms. Peet stated that the Applicant had submitted an extensive exhibit booklet and set of documents for the Commission's consideration; that after an overview of the project, Mr. Eriksen and Mr. Launay will present more detailed information; that a set of proposed conditions of approval would be submitted at this time and one paper copy of items that will be discussed during the traffic portion of the presentation; that the Applicant proposes to divide two undeveloped parcels totaling 132.9 acres into 249 single-family lots as a cluster subdivision in the agricultural residential district; that the original plan was for 245 lot but was increased because of additional site area; that it did not need to be resubmitted to PLUS for the additional four units; that the entire project is located in the Low-Density Area – a designated rural area according to the 2018 Sussex County Comprehensive Plan; that a portion of the acreage is to be devoted to lots and streets and 68.41 acres (51.5%) of the parcel is anticipated to be interconnected open space subject to final site engineering; that the proposed cluster subdivision is superior in design to a standard subdivision as the project proposes significant amounts of open space in excess of the Code's requirements, landscape buffers compliant with the Code's requirements that are designed to protect environmentally sensitive areas on this site including regulated tidal and non-tidal wetlands, and a stormwater management system that will act an amenity and natural companion to the natural features on this site; that this plan includes a pool, bathhouse and sidewalks on both sides of the streets that will connect to the proposed multi-modal path; that the project is located on the north side of Round Pole Bridge Road adjacent to the Beaverdam Creek; that nearby subdivisions include Pintail Point, Cripple Creek, Covington Chase, River Rock Run, Creekfalls Farm, and Windstone; that the site consists of vacant land which a portion was for agricultural

use and the remainder with existing vegetation; that there are 8.3 acres of tidal wetlands and 4.62 acres of non-tidal wetlands which will be discussed in the presentation by Mr. Launay and Mr. Eriksen; that the density will be 1.99 units per acre and Sussex County's base density is 2 units per acre; that the Twin Masts concept plan was presented to PLUS on August 29th, 2021; that the PLUS response letter was provided on January 24th, 2022; that the plan was sent to the Technical Advisory Committee (TAC); that concerns had been raised relating to development near the Eagle Crest Hudson Aerodrome, traffic and development within environmental sensitive areas of the site; that the project is located within one half mile of a turf aircraft runway, located at the Eagles Crest Airfield Aerodrome; that the team had met with the Eagle Crest community the past two evenings to discuss their concerns to noise and safety; that the team proffered a Condition of Approval, specifically Condition P, to address the concerns raised; that Condition P states, *the Declaration of Restrictions shall state that the site is located approximately .5 mile from a turf runway used for private and personal aircrafts; that the Developer shall consider the relocation of Lots 132, 133, 236, 237 and Lot 249, as identified on the Preliminary Site Plan for allocation of open space*; that the last sentence was added due to the time constraints of being two days before the public hearing; that the team researched the applicability of the FAA's regulation to the private airport previously; that the FAA regulations are not applicable to the private airport; that the Eagle Crest community has referenced the regulations as guidelines which they desire to follow; that the proffered condition is designed to add additional precautionary measure to address noise and safety, but is not something the FAA requires; that there was a lot of discussion relating to Runway Safety Areas and/or Zones, which is a defined term within the FAA regulations, which are not applicable to the airfield; that she requested the drafted condition be considered by the Commission as it currently was; that the team had a working draft on an airport notice relating to noise to be considered in the inclusion of the HOA documents; that the language is subject to change; that the Eagle Crest representatives have requested she read the current language into the record; that the current language provides a section titled "Airport Notice", stating *this subdivision is located approximately .5 mile from a turf runway used for private personal aircraft, that there may be flights over the subdivision that will generate noise associated with aircraft in flight or aircraft engines operating, that the use and enjoyment of property within this subdivision is expressly conditioned on the acceptance of annoyance or inconvenience which may result from such normal airport uses and activities*; that the language was taken from other governing documents for other communities, but had been slightly modified; that the team is currently working on the language, ensuring an open line of communication is kept with Eagle Crest; that another concern expressed related to traffic; that a Traffic Impact Study (TIS) was performed by The Traffic Group, Inc.; that Ms. Betty Tustin, with the Traffic Group, Inc. was unable to attend the meeting, but had prepared a summary letter for the Commission's review and consideration regarding the Traffic Impact Study; that another concern expressed related to the presence of wetlands, tree removal and buffer requirements; that Mr. Launay and Mr. Erikson will speak to these concerns in more detail; that the buffers from the tidal and non-tidal have been provided and were in compliance with the Code at the time of application submission; that the plan has Code compliant buffers in place; that the project will be on public water and sewer, which is anticipated to be provided by Artesian; that Twin Masts complies with the Zoning and Subdivision Codes, as well as the Municipal Code §115-19 and the Comprehensive Plan, by proposing a low-density single family residential development; that the proposed development protects water resources, watersheds and scenic views; that §115-20 of the AR-1 Code permits for single-family detached homes to be located on individual lots; that §115-21, allows for outdoor amenities, for use by community occupants and their guests; that all community signs within Twin Masts will conform to the §115-159.2; that the parcels located in AR-1 will comply with all minimum height, area, and bulk requirements; that §4.4.2 of the Comprehensive Code discusses the structure of the Future Land Use Plan, which explains the County's two types of planning areas; that these planning areas are designated as growth areas and rural areas; that sites located within the low-density area designation, permit for single-family detached homes at two homes per acre, where a cluster-style site plan is used and a portion of the track is preserved, as permanent open space; that the project is located within

Investment Level 4; that the Cabinet Committee on State Planning Issues through the Office of State Planning Coordination developed the first strategies for State Policies and Spending Document and Maps in 1999; that the document and maps are to be updated every five years; that the most recent update took place in 2020; that State Strategies were designed to help the committee provide State investment decisions, which serves as a framework for coordinating plans and actions of local government; that Chapter 4 of the Comprehensive Plan explains that the State Strategies for State Policies and Spending Map classifies areas as Investment Levels 1, 2, 3 or 4; that Investment Level 4 clarify the State's policies and priorities for the expenditures of State funds on infrastructure; that the State Strategies for State Policies and Spending Map is not parcel based; that the map is not a Land Use Plan; that it is required that any land development activities be in compliance with the Comprehensive Plan, relevant Codes, Ordinances of local jurisdictions; that the parcels are consistent with the Comprehensive Plan by proposing single-family homes, at two units per acre within the low-density area; that the State will not prioritize funding within Investment Level 4, however it does not mean development cannot take place within an area of Level 4 classification; that major subdivisions have consistently been approved in the nearby area of the proposed site; that the project complies with §115-25(e) of the AR-1 District Design requirements and §115-25 for Cluster Development for reasons submitted in the project reference materials; that the proposed plan complies with §99-9C Code requirements; that the plan integrates the proposed subdivision into existing and surrounding landscape; that the Applicant proposes significant open space, totaling 51.5% of the entire site; that minimum landscape buffers and all proposed lots are located with a minimum of 40-ft. from the outbound of the property; that all lots will be configured outside of the regulated wetlands; that minimum buffers have been provided; that there are no known areas requiring historic preservation on the site; that the plan preserves large tracts of open space and scenic views; that there will be minimization of tree removal; that screening of objectional features from neighboring properties and roadways will be provided; that water and sewer will be provided by Artesian; that stormwater management system will incorporate best management practices for stormwater management and will discharge in accordance with the State and local standards; that the proposed development is planned in a way to minimize erosion and sedimentation, changes in groundwater levels, increased rates of runoff, potential for flooding and design of drainage so that groundwater recharge is maximized; that the plan accounts for safe vehicle and pedestrian movement within the site and to adjacent ways; that it is anticipated the Twin Masts community will cause current property values to remain the same, if not increase values in the area; that the proposed subdivision will not adversely impact adjacent farmland, due to the provided buffers and natural areas; that one point of access is proposed off Round Pole Bridge Rd.; that the project is located near other residential land uses, therefore it is compatible with the design, density, homestyle and land use of the surrounding area; that an efficient stormwater management system is proposed to act as an amenity for the community; that the plan is consistent with the Comprehensive Plan for the reasons to be stated and for the reasons provided within the Applicant's submission, prepared by Solutions; that she understood the Commission may require some redrafting of proposed Condition P; that they did prepare some unique conditions for the Application for the Commission to consider; that proposed Condition F stated that dirt berms shall be installed where feasible, along the perimeter of the site, adjacent to Coastal Hwy/Rt. 1, provided the dirt berms are permitted by applicable agencies; that berms should not be required in areas where existing forests or similar vegetation may be retained along Coastal Hwy; that it is not to say that it may not occur; that the dirt berms shall not exceed four feet in height; that the berms shall be vegetated and remain consistent with best husbandry practices; that there was a comment submitted into the record relating to nearby hunting activities; that due to this, they included proposed Condition O, which requires a notice advertising nearby property owners of hunting activities within the area and proposed Condition P, as previously stated, is unique to the Application.

Mr. Robertson stated the words "*shall consider*" in the proffered Condition of Approval does not offer much, as it only proffers the consideration of relocating the lots; that the Developer would not be

required to relocate the lots and he felt the condition may require redrafting.

Ms. Peet stated the team had already taken measures, meeting with the Eagle Crest community, and presenting sketches of potential changes; that there is an ability to move the lots, and that Mr. Erikson would be discussing the relocation of the lots in more detail.

The Commission found that Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc. spoke on behalf of the Application; that he performed an evaluation of the site with respect to wetlands and environmental resources; that the site is 132.9 acres; that the Broadkill River and Beaver Dam Creek are located along the perimeter of the site; that there are State regulated tidal wetlands bordering the creeks and the upland portion of the site; that the tidal wetlands are regulated by the U.S. Army Corp of Engineers; that along the edge of the tidal wetlands, there is a fringe of forest with non-tidal wetlands for various distances, until the land rises and becomes part of more well drained soil types; that there is approximately 4.6 acres of non-tidal wetlands around the perimeter of the site, which buffer the non-tidal wetlands; that at the time of the Application's submission, the Code required a 50-ft. buffer from the State regulated tidal wetlands, which was provided on the site plan; that in addition, the Applicant has proffered a 25-ft buffer from the Federally regulated non-tidal wetlands; that on the interior of the site, there's 79.7 acres of agricultural field; that bordering the wooded wetlands there are 44.2 acres of upland forest around the perimeter; that the bulk of that forest is located at the northern end of the site; that a wetlands delineation was performed and submitted the U.S. Army Corps of Engineers; that the US Army Corps of Engineers issued an approved Jurisdictional Determination codifying the wetland boundaries; that elevations on this site, from the non-tidal wetland area to the interior of the site, range from five feet to 20 feet in elevation; that the site is well elevated; that there is a suite of soils on the property that are well drained loamy sands; that loamy sands are a soil type with good separation between the surface and groundwater; that loamy sands have few limitations with respect to development, which make loamy sands highly desirable; that there are 44.2 acres of forest on that site; that 41% of the forest will remain, equaling to approximately 18.1 acres; that located in the northern portion of the site, there are six old borrow pit areas; that he believed these borrow pits were used to provide soil for the road construction performed in the late 1960s, when building Rt.1, and the overpass over the river; that the borrow bit areas are relatively small, isolated pockets in the ground , which fill with water seasonally; that there is one larger area, which does contain wetlands vegetation; that because these areas were originally dry land, being subjects of borrow pit excavations, now isolated and surrounded by existing uplands, the features are not regulated by the U.S. Army Corp of Engineers; that this was codified in the Jurisdictional Determination Letter; that he contacted DNREC's Division of Fish & Wildlife regarding potential threatened or endangered species; that the Fish & Wildlife Division did not express any concerns; that the Eastern Black Rail is a Federally threatened species; that the Eastern Black Rail is a marsh inhabiting bird, which inhabits deep in the salt marsh areas; that the wetlands located along the Broadkill River is a suitable habitat for the Eastern Black Rail; that there is a chance the Eastern Black Rail could be found on the site; that the project is providing buffers and the project is not proposing any water access, docks, piers or any other type of structure.

The Commission found that Mr. Jim Eriksen, P.E. with Solutions, spoke on behalf of the Application. Mr. Erikson stated that land planning is an iterative process; that the plan begins with a concept; that concept is adjusted as more is learned about the project; that the minimum buffer at the time of Application submission was 50 ft., with a non-tidal wetland buffer of 25 ft.; that there are a few floodplains in the areas within the vicinity of the wetlands; that they attempted to limit the number of lots which would encroach into the Flood Plains; that the plains have Base Flood Elevations associated with them; that there is a defined elevation standard; that when the grade is raised above the defined elevation, the area can be removed from the flood plain; that the average setback distance is 186 ft. from the tidal wetlands to the rear of the lots and /or ponds; that they are proposing well above the 50-ft.

buffer requirement; that they additionally attempted to avoid the clearing of trees within the 50-ft. buffer; that this was achieved, aside from a few isolated areas, being the locations of the stormwater management discharge points; that 18.192 acres (41.4%) of trees are to remain onsite; that they attempted to ensure the trees in the most sensitive areas remained; that the average distance between the non-tidal wetlands and the rear of the lots and/or ponds is 150 ft., being well above the 25-ft buffer requirement; that the site is located adjacent to residential uses along Round Pole Bridge Rd. and Hudson Rd.; that there is an existing wooded area, where they have provided a forested buffer along the edges; that they provided gaps between the lots and the buffers to accommodate drainage and grading connections; that once site topography and grading was performed, they realized the buffer was not feasible for the wooded area to remain within the buffer without grading into it; that they chose to shift everything more toward the center of the site; that they provided a bit more distance for the lots around the perimeter in an effort to keep the trees, while providing reasonable grades and connection around the perimeter; that located to the south eastern portion of the site, is an Excellent Groundwater Recharge area; that they have maintained less than 35% of impervious area, as required by Code; that they attempted to place open space, as well as a pond which will aid in additional groundwater recharge; that the site will handle stormwater management with six stormwater management ponds; that it is anticipated that the ponds will be extended retention wet ponds; that all stormwater management design will be in accordance with DNREC regulations and Sussex County standards; that stormwater conveyance will mostly be accomplished via closed conduit storm drain system internal to the site; that swales will be placed to convey runoff to open space areas; that the ponds are located within the open spaces, with four located in the center of the site, and two located around the perimeter; that the project does provide considerable open space; that approximately 68 acres (51%) of the site, is comprised of open space; that the perimeter open spaces is contiguous and consists of 51 acres; that the interior open space location was intentionally placed; that when they began working on the layout for Twin Masts, they were aware there was an airport in the vicinity of the site; that they attempted to keep the open space in the line of the runway for Eagles Crest; that Solutions had provided small airport considerations in the past; that Solutions was familiar with vertical clearances and the calculations required to avoid flight obstruction; that the airport is located on grade that is 10-ft. higher than the subdivision; that the planes will be 15-ft in the air at the time the planes reach Hudson Rd.; that the planes will continue to rise along the way; that the maximum height allowed in an AR-1 subdivision is 42-ft.; that by the time the planes reach the homes within Twin Masts, the altitude, based on a 20:1 slope, would be 120-ft. above grade; that after discussions with the pilots of Eagle Crest, it is likely the elevations would be 200-ft. elevation within that area; that for reference, the distance between the top of the homes and the planes would be the same distance as the Statue of Liberty, which is 152-ft tall; that they did contact the FAA to perform a determination; that because the FAA does not regulate private airports, the FAA performed a determination for the Georgetown Airport; that there was no mention of airport or regulation standards offered through the PLUS process; that the Eagle Crest airport has no regulation or design standard associated with the airport; that the team looked at the current restrictions Eagle Crest was currently working around; that they looked at the southern end of the runway, attempting to mirror what was being performed in that location; that 1,520 linear feet from the runway, there are trees and several existing homes within the Red Fox Subdivision which are located within the projected runway; that the Red Fox lots are approximately 2,050 ft from the edge of the runway; that the proposed future right of way location for the site is located further than the trees on the south side; that the lots are approximately 1,931 linear feet from the runway; that they are providing a similar situation on the north of the site, to what is existing on the south of the site; that they did meet with the pilots of Eagle Crest to discuss their concerns; that they are willing to relocate lots, to provide a greater area of open space, per the input received from the pilots; that the site plan proposes 249 single-family homes, within an AR-1 Cluster Subdivision; that central water will be provided by Artesian Water Resources, Inc.; that a central water system will be designed in accordance with all regulatory standards, as well as standards set by Artesian; that Twin Masts will have a central sanitary sewer system, which will also be provided by Artesian; that

the site does have a pump station to connect the sanitary sewer to the regional infrastructure, which will also be provided by Artesian; that the subdivision roads will be designed to meet Sussex County standards; that an access point will be located off Round Pole Bridge Rd. and the entrance improvements will be designed in accordance with DelDOT standards.

Mr. Erikson shared with the Commission a presentation prepared by and on behalf of Ms. Betty Tustin, Traffic Engineer with the Traffic Group, Inc., who was unable to attend the public hearing. Mr. Erikson stated he could discuss portions of the traffic impact, however, could not speak to certain aspects of the Traffic Impact Study, as certain areas are outside of his expertise as a civil engineer; that the Traffic Impact Study was prepared by the Traffic Impact Group, Inc. and DelDOT; that DelDOT in accordance with the Memorandum of Understanding with Sussex County reviewed the Traffic Impact Study completed for the Twin Masts development; that any proposed development projected to generate more than 50 peak hour vehicle trips or more than 200 daily vehicle trips is required to complete a Traffic Impact Study (TIS); that there is an exception, however the project did not apply; that DelDOT selects the intersections for a study based on a travel demand models, which forecast travel patterns for the proposed development; that intersections are selected based on the number of trips for the proposed development which are projected to pass through that intersection; that study intersections are identified if more than 50 peak hour trips are projected to pass through that intersection; that the intersections selected for the study based on this criteria, were the intersection of Round Pole Bridge Rd. and Hudson Rd., the intersection of Rt. 1 and Hudson Rd./Steamboat Landing Rd., the intersection of Rt. 1 and Rt. 16, the intersection of Rt. 1 and Rt. 1 second crossover south of Hudson Rd, the intersection of Rt. 1 and Eagle Crest Rd/Oyster Rocks Rd, the intersection of Hudson Rd. and Eagle Crest Rd, the intersection of Hudson Rd and River Rock Way, the intersection of Hudson Rd. and Falls Rd., the intersection of Hudson Rd. and Sweetbrier Rd. and the site access on Round Pole Bridge Rd.; that there was comments provided questioning why the intersection of Round Pole Bridge Rd. and Cave Neck Rd. were not provided; that this intersection was not selected for the study because less than 50 peak hour trips are projected to pass through the intersection from the proposed development; that most of the traffic will travel toward Hudson Rd., rather than down Round Pole Bridge Rd.; that the intersections were studied on a typical weekday, as well as a Saturday during the summer months; that DelDOT required they inflate the traffic count, collected at the study intersections by regional growth factors to represent traffic volumes when the project is anticipated to be completed; that completion is estimated for 2028; that DelDOT required that they include traffic volumes for other developments within the area, which include Compass Pointe, Chapel Farm, and Vincent Overlook; that to reach the peak hour volumes to be studied, they added in peak hour trips, which were projected to be generated by Twin Masts; that the analysis results indicated the studied intersections along Rt. 1 are projected to operate on unsatisfactory levels of services by the traffic engineering criteria by which intersections are judged; that DelDOT was committed to investing a significant amount of dollars into traffic related concerns along this section of Rt. 1 and Rt. 16, by proposing a Grade Separated Intersection, which is already underway; that the DelDOT project is anticipated to be completed in 2025; that southward, DelDOT has a project along Rt. 1 from the point of the intersection with Hudson Rd. and Steamboat Land Rd, southward beyond that, DelDOT has a project at the point of Rt. 1, Eagle Crest Rd. and Oyster Rocks Rd.; that the project is going to eliminate some of the crossovers, restricting certain movements at the intersections; that at the intersection at Hudson Rd., left turns from Hudson Rd. and Steamboat Landing Rd. onto Rt. 1 will be restricted; that vehicles will not be able to cross straight across Hudson Rd. onto Steamboat Landing Rd.; that at the intersection with Eagle Crest Rd., left turns from Rt. 1 onto Eagle Crest Rd. and Oyster Rocks Rd. will be restricted; that vehicles will not be able to cross straight across Eagle Crest Rd. to Oyster Rocks Rd.; that a third project is proposed along Rt. 1, as a Grade Separated Intersection located at Cave Neck Rd., that the project is slated to be in construction in 2025; that a trend among all the projects, is the limitation of motions across Rt. 1; that this is the goal of the Highway Preservation Corridor; that DelDOT is trying to restrict access onto Rt. 1 as well, which is the reason access from Rt.

1 cannot be obtained for the project; that DelDOT does not want access from Rt. 1; that typically, proposed developments are required to make roadway improvements to mitigate any level of service deficiencies at the study intersections; that due to the fact, DelDOT had projects designed, being under construction or planned for construction in the near future; that the Twin Masts development will be making financial contributions to these projects; that DelDOT has a fourth project in the study area intersection of Hudson Rd, Cave Neck Rd. and Sweetbriar Rd.; that a roundabout had been selected for the area; that the project is anticipated to begin construction in 2024; that Twin Masts will be making a financial contribution to the roundabout project as well; that with the various DelDOT projects, traffic patterns are anticipated to change in the future; that less traffic will be utilizing Hudson Rd., as left turns from Hudson Rd onto northbound Rt. 1 will be prohibited; that the grade separations will be located to the north, at the location of Rt 1 and Rt. 16, and to the south, at the location of Cave Neck Rd; that this will attract drivers in other directions to reach their destinations along Rt. 1; that Twin Masts development will also be improving the projected site frontage along Round Pole Bridge Rd., with 11-ft. travel lanes and five foot shoulders, as it was required by DelDOT; that they will be constructing right turn lanes into the development, to remove the turning vehicles, from the vehicles continuing along Round Pole Bridge Rd.; that DelDOT projected nearly 85% of the trips generated by Twin Masts will travel to and from the east, via Hudson Rd.; that few trips generated by Twin Masts will travel to and from the west, on Round Pole Bridge Rd.; that these numbers were developed by DelDOT; that these numbers were reviewed by traffic engineers and were accepted by several experts who confirmed the numbers; that “trips” did not equal the number of additional cars on the road; that one vehicle may make several trips in and out of the development; that they count a vehicle leaving as one trip, as well as the vehicle returning as one trip; that the one vehicle would count as a total of two trips when entering and exiting the site; that hypothetically, if a development were to generate 1,000 daily trips, it would indicated that there would be 500 daily trips leaving and 500 daily trips returning; that the vehicles will not be leaving and returning at the same time; that these trips dissipate as they move in different direction in the study area; that not all of the 500 daily trips in the hypothetical example will pass through each of these study intersections, as they have different destinations, taking different routes; that the Federal Highway Administration conducts annual surveys of bridges; that for 2020, 1.6% of Delaware’s 872 bridges, which equals 14 bridges, were classified as structurally deficient; that the American Road and Transportation Builders Association reported the top ten structurally deficient bridges in Delaware; that only one bridge was located within Sussex County, being the Rt 54 bridge, over the Assawoman Bay in Fenwick Island; that a speed study was conducted near the site access, which included crash data from DelDOT; that the study stated that 85% if vehicles traveled 34 mph or less in the westbound direction; that 85% of the vehicles travel 31 mph or less in the eastbound direction; that the average speeds are 27 mph westbound and 31 mph eastbound according to the crash statistics; that there have been four crashes along the entirety of Round Pole Bridge Rd in the past three years; that all the crashes were single vehicle crashes; that three of the crashes involved a deer; that one crash involved the ditch and only one crash involved an injury.

Mr. Robertson and Ms. Wingate stated the lots proposed to be relocated did not make sense to the area related to the flight path and requested Mr. Erikson point out the specified lots.

Mr. Whitehouse advised the Commission that the Applicant’s Revised Preliminary Site Plan was received on January 28th, 2023.

Ms. Stevenson stated she appreciated the avoidance of lots being placed in areas the soil is not good; that she stated the traffic is a big concern for the project; that the traffic will increase from 290 vehicle trips per day to 2,407 vehicle trips per day; that she does have concerns relating to the road; that she questioned if upgrades are being proposed only along the frontage of the property along Round Pole Bridge Rd.; that she questioned if a request was made to DelDOT relating to a potential entrance from

Rt. 1 and she requested if anyone was present from DelDOT to direct her questions too.

Mr. Erikson stated the road will be approved along the projected frontage of the property which will include the Round Pole Bridge Rd. out to Hudson Rd.; that they had discussions with DelDOT regarding the Corridor Preservation, where DelDOT stated they do not desire entrances from Rt. 1.

Chairman Wheatley advised the Commission that in the attempt to improve intergovernmental coordination between State and local government, DelDOT graciously provided two DelDOT representatives, one representative being Mr. Mike DuRoss; that the DelDOT representatives are representing as a neutral party, being neither in support of nor opposition to the Application and the representatives are present for the benefit of the Commission.

Ms. Stevenson questioned if the Applicant were to request an entrance onto Rt. 1, would the request be considered by DelDOT; that she felt the proposed traffic increase onto a road, which was not suitable for the increase, versus Rt. 1 was not optimal; that she had read all 330 pages of the Traffic Impact Study, however, she still had questions relating to what could be done to Round Pole Bridge Rd. to allow for the proposed increase and what could be done to keep the traffic from using Round Pole Bridge Rd; that from what she read, she understood that DelDOT stated they did not feel traffic would travel Round Pole Bridge; that traffic would more likely travel Hudson Rd.

Chairman Wheatley questioned if there were any plans for how the flight path runway would be handled.

Mr. Hopkins stated the airport has been present for a long time and he questioned if there was potential for the airport to cause an adverse impact on the proposed subdivision.

The Commission found that Mr. Mike DuRoss, on behalf of DelDOT's Division of Long Range Planning was present per the staff's request for potential aviation issues; that he stated Corridor Preservation projects are handled by DelDOT's Development Coordination Division, which was not the division with DelDOT he represented; that generally, the Corridor Preservation is handled through the Traffic Impact Study process; that he could not speak directly to the decisions made for the subject application; that he did recognize that general policy is that entrances, directly onto Rt. 1, are limited for communities similar to the one proposed; that he did believe the condition of Round Pole Bridge Rd. was addressed within the Traffic Impact Study; that he stated he could not answer Ms. Stevenson's questions, as they are required to be answered by a different division within DelDOT; that aviation is regulated by the FAA (Federal Aviation Administration) under Part 77, as well as Delaware Title 2 §2152; that DelDOT's role is limited to public use airports; that DelDOT does not have the ability to make official comments relative to private use airports; that he was unable to speak to the future, but felt the provided comments by the Applicant's counsel, proffering notification was a step in the right direction.

Ms. Wingate questioned if the travel lanes would be 11 ft on each side, for a 22 ft total road width and if the road improvements were only along the frontage of the property.

Ms. Stevenson questioned if Mr. Erikson could understand her concerns relating to the potential traffic impact on Round Pole Bridge Rd, which is not currently built to accommodate the proposed level of traffic; that she questioned if there was anything the Applicant could do to require traffic to utilize Hudson Rd. rather than Round Pole Bridge Rd; that she questioned the location of the amenities, if relocation of the amenities will require the loss of additional trees, if the proposed stormwater management was placed for necessity and functionality or to allow residents to be located near water and if some stormwater ponds could be eliminated to provide for the relocation of lots and preservation

of trees.

Mr. Erikson stated the road would be constructed with 11 ft travel lanes, five-foot shoulders, and a right-turn lane onto the site; that they are required to make road improvements along the frontage of the site, as well as considerable contributions to other areas as well, which were required by DelDOT; that he had traveled Round Pole Bridge Rd.; that he felt it was faster to travel down Hudson Rd.; that he stated the traffic patterns on Hudson Rd. will be changing with the future elimination of the Rt. 1 crossover; that there will be a Grade Separated Intersection at Rt. 16 and Cave Neck Rd, which will provide more convenient ways to travel; that the Applicant could not propose any additional options without returning to DelDOT; that the amenity locations are currently placeholders; that currently the amenities are centrally located on the property; that with the potential relocation of the lots, the amenities may be relocated, which would not necessarily require additional trees to be removed; that he could not confirm this without having a sit down to review the site plan and potential options; that there is space to relocate the lots without major changes to the plan; that his goal is to keep the amenities centrally located and reconfigure the amenities in a way that keeps structures out of the aviation pathway; that the stormwater management placement is a mixture of necessity and desired design; that some of the soils are restrictive; that some of the ponds provide additional placement opportunities; that they are currently considering extended retention wet ponds, which is allowable by DNREC; that they are currently underway to receiving final consideration of where the ponds are going to be placed; that they are required to identify where groundwater is located, making considerations based on that determination; that they would be required to tie back into the proposed grades and engineer the site; that they could reduce the sizing of some of the perimeter stormwater ponds; that the proposed plan is preliminary and subject to agency review; that they always attempt to show more conservative clearing of trees on the site plan, as they do not desire to misrepresent something and be required to clear more trees than proposed.

Ms. Stevenson confirmed for the Commission that stormwater management ponds are considered open spaces for the site.

Chairman Wheatley questioned the current road width of Round Pole Bridge Rd, what road improvements are being proposed and he requested Mr. Erikson show the Commission where the road improvements are proposed.

Mr. Erikson stated improvements are proposed along the projected frontage of the site, from the western portion of the site to Hudson Rd; that the improvements will not be from the site's property line due to the presence of wetlands; that the proposed road improvements are for 11 ft travel lanes and five-foot shoulders, for a total width of 32 ft; that currently Round Pole Bridge Rd. ranges from a road width of 18 ft. to 20 ft., with no shoulder, based on their survey; that the Applicant had placed a Pavement Core Request with DelDOT, and is currently awaiting DelDOT's response and the provided improvements will be whatever is required within DelDOT's response.

Ms. Wingate stated she was still confused on which lots were proposed to be removed or relocated.

Mr. Robertson stated there were two submitted plans; that the site plan dated January 18th, 2023, on the Sussex County Online Docket, is the most recent plan relating to the subject lots.

The Commission found there was no one present who wished to speak in support of the Application and several people in opposition to the Application.

Mr. Robert Masone spoke in opposition to the Application and in his presentation showed a video of his helicopter taking off at Eagle Crest Airport. Mr. Masone stated that he lives in Eagle Crest and that it

is the second largest airport in Sussex County; that planes of different weights will be lower or higher over the adjacent areas as they ascend; that if there were a catastrophic failure at take-off, creating the plane goes down, it would be more than likely be over the 249 proposed homes; that the development is unsafe for people; that in addition to the safety issues, there is a noise issue and it should be deed notification; and that there should be an air easement where trees cannot grow up and become an obstruction to the flight path.

Ms. Sara Esposito, P.E., spoke in opposition to the Application. Ms. Esposito stated that although she works for DelDOT, she is not speaking on behalf of DelDOT this evening but speaking as a resident of Round Pole Bridge Road; that this development would increase the number of homes on this roadway by 600%; that there are currently 40 homes on this road with only two that are less than one acre; that the traffic on Round Pole Bridge Road will have an 800% increase; that there were two proposed subdivisions in this area, one was The Meadows of Beaver Creek which was originally proposed to be 47, 20,000 square foot lots and was changed to seven, 5-acres lots which fits the character of the neighborhood and the second was Lockhaven which was denied due to the proximity of Beaverdam Creek. Ms. Esposito cited the Lockhaven precedents and asked the Commission to note these and deny Twin Masts for similar reasons. Ms. Esposito stated that the roadway is approximately 18 ft. wide; that it is tar and chip with crumbling edges; that there are five, 90 degree bends with rollovers and dangerous sight lines with unposted speed limits therefore, it is 50 mph; that the bridge frequently floods; that a lot of farm equipment use the roadway; that tar and chip roads are only suitable for roads less than 500 ADT and therefore this road would have to be upgraded to an asphalt road which has a much greater cost than tar and chip; that the DelDOT model only looks at jobs in the area and does not factor in Elementary and Middle School, the library, recreational fields, the nearest grocery store, medical offices and restaurants; that the Cave Neck Road intersection was not analyzed; that the plan is not a superior site plan design as there are homes clearly placed in wooded wetland area, that a cluster development is to preserve open space; that over 30 lots are located in the floodplain and an additional 15 lots located in a mature forest; and that these areas should be for passive recreational space only.

Mr. Robertson asked the DelDOT representative to respond to the comment that Ms. Esposito made regarding the model only considering driving to and from jobs.

Mr. DuRoss, a DelDOT representative stated that the models do account for job locations, employment by place of work is one of the inputs that is considered, and other inputs are population, dwelling units, and ten different categories of jobs.

Mr. Robertson asked how this is taken into consideration when there are many people who have their second homes or retirement homes in this Sussex County.

Mr. DuRoss stated that there are a whole variety of trip generation rates that convert population, housing, and jobs into trips by different trip purposes which vary considerably by County in Delaware, and they work with the University of Delaware to gather that information.

Chairman Wheatley asked Mr. Eriksen to respond to the comment that this plan is not a superior plan.

Mr. Eriksen stated that the project proposes significant amounts of open space, landscape buffers to protect environmentally sensitive areas on this site including tidal and non-tidal wetlands, and a stormwater management system that will act as an amenity and natural companion to the natural features on this site, and that this plan provides for amenities which includes a pool, bathhouse, and sidewalks on both sides of the streets that will connect to the proposed DelDOT multi-modal path along Round Pole Bridge Road.

Mr. Robertson asked how the buffers and a stormwater management system would be different than those in a standard subdivision.

Mr. Eriksen stated that the buffers are well beyond the minimum.

Mr. Jeff King spoke in opposition to the Application. Mr. King stated that he is a homeowner in the Eagle Crest Airdrome; that he is a small business owner and a pilot; that he moved here to specifically live at the airdrome; that he had served on two airport boards and a member of AOPA which deals with aviation safety; that he is not representing AOPA today but that they have submitted comments into the record; that he emailed the FAA regarding the aeronautical study that stated that it was determined that there was no hazard to air navigation; that it only applies to public use airports and did not apply to Eagle Crest; that the FAA also stated that they concurred that the site is off the extended centerline of Eagle Crest-Hudson Airport and that the private use airport is a matter for a local city or municipality, as the land use authority; that they said that they won't get involved but that someone should be responsible for where airports go and what's around them for incompatible use; that the FAA concluded with it stands to reason that if the municipality permitted the airport, it would offer some protections, but that would be up to the land use authority; that in 2018 the Commission determined that the airport is a non-conforming use grandfathering Hudson Fields and Hudson Fields Airport and that comes with a responsibility to respect the airport environment and what is around it; that the runway is only 1,600 feet away from the proposed development; that the FAA doesn't manage private airports but they do have an advisory circle and they include private airports in their recommendations for safety; that they are working with the Developer but have only begun communications and safety is something that you don't want to rush; and that the property to the south has an air easement.

Mr. Jeff Seemans spoke in opposition to the Application. Mr. Seemans stated that he is a retired registered landscape architect and land planner; that he wanted to address the question if this plan qualifies as a superior cluster subdivision; that the current plan is an imposter and pretending to be a superior cluster subdivision plan; that almost 60% of the woodlands on this property are planned to be removed; that the Cluster Ordinance states that *homes shall be clustered on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including, but not limited to, wetlands, mature woodlands, waterways, and other waterbodies, that it does not inhibit the development of wooded parcels*; that he questioned why the engineer would be required to show the woodlands if they are not provided any protection; that the State's PLUS report stated that 30 lots, as well as the entire amenity area, are located within the 100 Year Flood Plain; that avoiding development within the 100 Year Flood Plain has been a standard land planning procedure for decades all over the Country; that he felt the road layout was not superior; that it is a grid layout with two cul-de-sacs; that with the exception of two short sections of street, which total about 700 linear feet, every street is double loaded with lots; that there is almost no street with single loaded lots; that a superior plan would provide a view to a community green or community park; that he felt the lot layout was not superior; that out of 249 proposed lots, 107 lots back to stormwater management ponds; that unless the developer intends to drill agricultural wells to keep the ponds filled, there will be future droughts and draw down; that this will lead to exposure of muddy banks, algae and waterfowl problems; that there are 13 lots backing to Rt. 1; that 16 lots back to other lots but for tiny, thin strips of open space in between the lots; that 136 lots out of 249 lots, being almost 55% of proposed lots are far from superior; that six lots surround the sanitary sewer pumping station; that the Cluster Ordinance clearly states that there is a sequence and a process that should be followed; that the Ordinance states that, *the Applicant should identify lands that should be preserved, then identify developable areas*; that many plans placed before the Commission have made a mockery of the Zoning Code's language; that instead of a real AR-1 plan to establish density count, it had been allowed for simple math to establish the density number;

that due to this, the current plan and those before it have disregarded the natural environment; that the Cluster Ordinance states “the Cluster Development Plan *will* preserve the natural environment; that the land plan is covered with 7,500 sq. ft. lots, which are permitted to be as narrow as 60 ft. wide; that these lots are supposed to be superior and the proposed plan should be denied and reworked according to the Cluster Ordinance’s actual language.

Mr. Christian Hudson spoke in opposition to the Application. Mr. Hudson stated that he is speaking on behalf of Hudson Family, LLC., Eagles Crest Airdrome and Hudson Homestead; that he doesn’t oppose the land use for a subdivision; that he opposes the site plan in its current form; that he approved of proposed Condition O but in proposed Condition P, he would like the word *shall* versus *consider*; that they like the HOA restrictions to acknowledge and confirm the pre-existing lawful non-conforming uses of Hudson Fields properties as defined in the Sussex County Board of Adjustment August 7, 2018, Notice of Decision – Sussex County Deed Book 1614 Page 194, so as to preserve the property rights of the airport and the special event venue; that the design of the Twin Mast property be designed to eliminate the dwellings that might be located within the flight path; and thanked the Commission members for making a recommendation of approval to change the Future Land Use Map to include the airport and regrets that County Council did not support the recommendation.

Mr. Al Rizzo spoke in opposition to the Application. Mr. Rizzo stated that he is a certified professional soil scientist; that he began his career with the Sussex Conservation District and the he also worked the U.S. Fish and Wildlife and with Bombay Hook and Prime Hook National Refuge; that there are highly permeable soils on the site and at least one-third of the site as extremely good for groundwater recharge; that there is very short infiltration and return pathways to the Broadkill River; that when you remove 60% of the forested areas, as noted in the PLUS review, you will have a loss of habitat, displacement of wildlife, and an increase of vehicle collisions with deer; that one of the more important aspects of the site resource features is placing roads and houses over the top of the largest recharge area in the vicinity which is mainly in the southeast corner of the property where the developer proposes to eliminate seven acres of mature forest and supplement a 30-ft wide landscape buffer in lieu of that; and that this plan does not meet superior plan designs.

Mr. John Chirtea spoke in opposition to the Application. Mr. Chirtea stated that he lives at Eagle Crest and is a pilot and the president of the Homeowners Association; that they are in communications with the Applicant and think that they can agree on getting a clear site path through the proposed subdivision; and that they have concerns about the noise, safety, and the homeowner documents that will go in place to protect them, the Commission and Commission members in the future.

Ms. Heather Kingrey spoke in opposition to the Application. Ms. Kingrey stated she grew up living along Round Pole Bridge Rd.; that she requested a pilot show the aviation flight path, as she did not understand how the removal of the lots will create a clear flight path; that across multiple documents there is an effort to preserve the natural environment by minimizing impact; that she felt a consensus across the documents would be that the proposed development should be denied; that a Cluster Development, is the effort to fit homes on smaller tracts of land in order to preserve natural and environmentally sensitive areas; that the Code states, the first step is to distinguish where the environmentally sensitive areas are located; that there are mature forest located on the property, as it is stated within the PLUS report; that she overlaid documents submitted by the Applicant, creating a document which reflects the areas where homes are proposed in areas that should have been avoided; that Cluster Development is a deviation from the standard in order to preserve; that the preservation element is being missed by the Applicant and the Applicant’s team; that by doing this, the Applicant has missed the very first step stated within the Code; that she believed 98 lots should not have been proposed; that even if the developer were to only build the 151 homes, it would still not be viable for the location

as the traffic is not safe; that majority of the time, she travels the length of Round Pole Bridge Rd.; that the area is located within Investment Level 4; that the Investment Level matters because the development will cost money in the long term; that a previous application, proposing far fewer homes, was previously denied for the location; that the other subdivisions mentioned by the Applicant's team are not located on Round Pole Bridge Rd.; that many things get missed in the rush to develop and push applications through; that the clear cutting of trees is proposed within the most sensitive area of the site, being within an Excellent Water Recharge Area; that the natural buffer located between Round Pole Bridge Rd. and Hudson Rd. is the area proposed for clear cutting; that the proposed open space does not appear contiguous; that the conclusion of the Applicant's application states, *the proposed community of Twin Masts will enhance the area with a well-planned design, upscale homes and amenities, and limited impact on the land, that the design preserves large amounts of open space, while preserving attractive views within the community; that the proposed community of Twin Masts meets the standards set forth by the County and State and will provide a superior living environment for future residents without placing a burden on County, State and taxpayers to serve this community; that relating to the PLUS report, the Applicant responded stating, the design has largely limited encroachment on environmentally sensitive areas of this site as feasible, providing buffers and considerations beyond the minimum County requirements; that she felt the proposed design was preposterous; that the claims made by the Applicant were blatantly false, being an insult to the Commission and the public and she urged the Commission to deny the Application.*

Captain Abraham Scheer, M.D. spoke in opposition to the Application. Mr. Scheer was part of the auxiliary for the U.S. Airforce Civil Air Patrol; that he is a Neurologist who has been practicing medicine in Sussex County for 15 years; that he was the previous Director of Neurology for Beebe Healthcare; that he currently is a neuro-hospitalist for Bayhealth; that he previously had a patient whose life was saved because an aircraft was able to land at Eagle Crest, allowing the patient to be transported to a facility for his required care; that he lives along Eagle Crest Rd.; that Eagle Crest Aerodrome has other purposes for Sussex County; that there is an area labeled off for emergencies and helicopters services; that statements of Eagle Crest only being a small private airport is misleading; that Eagles Crest is a diamond within Sussex County; that he feels the Commission is obligated to practice preventative medicine relating to land use; that the Runway Protective Zone has been discussed; that DeIDOT and FAA are not involved, due to Eagle Crest being a private airport; that the differentiating factor of private versus public airports, is the ability for other aircraft to land at the airport without permission; that in the event of an emergency, other aircrafts are permitted to land at Eagle Crest; that he felt it was important the Commission understand the airport is not solely for private aircraft only; that since 1990, the amount of aircrafts which have gone down has been reduced to 50%; that even so, all of us practice safety; that as a protective measure, he strongly believed there needed to be a Runway Protective Zone, which will provide protection of the aircraft coming in or going out; that the previous aviation statements provided were in relation to the Georgetown Airport; that the Federal government does not want to micromanage Eagle Crest; that the FAA feels it is the local government's responsibility to take care of the community; that it does mention the recommendations to follow the Federal guidelines; that the Federal guidelines request a Runway Protective Zone; that he felt the Commission are required to ensure a Runway Protective Zone is established and reflected on the site plan; that many people choose to travel Round Pole Bridge Rd. for the sightseeing; that he anticipates a lot of noise complaints will be generated from the community and he requested the Commission consider the mentioned safety concerns before approving the plan.

Mr. Johannes Sayre spoke in opposition to the Application. Mr. Sayre stated he lives west of Lewes; that Hudson Rd. is one of his access routes in and out of his development; that many people have spoken to how many lots were proposed within the 100-Year Flood Plain; that the northwest portion of the site is vulnerable to permanent inundation from sea level rise; that historical records show the forest area,

located to the west of the site had existed since 1937, being presumed as mature forest; that the Office of State Planning opposed the proposed subdivision; that there is a lot of testimony provided from the public relating to things that cannot change; that one thing that does not change is natural and municipal resources are finite, with many resources being inelastic; that Sussex County is scrambling to gain access to Rehoboth and Lewes municipal sewer treatment facilities; that Sussex County roads are clogged; that he counted 4,600 new units from multiple articles published by Cape Gazette; that Ellendale is proposed to have 1,800 new units, with a population growth factor of 10 x the current; that the Granary in Milton Village will be adding 2,000 units; that the growth rate of residential housing, being west of Five Points is huge; that he felt Sussex County does not have a plan for future growth; that Sussex County resources are being overtaxed; that the character of Sussex County is being destroyed; that the quality of life for Sussex County residents is declining, while the property development industry benefits; that Sussex County Government has a problem to solve; that Sussex County must address the needs of agricultural land owners who's land is no longer used for production, thus losing its tax advantage; that selling off our natural resources for real estate development is not the way to solve the issue; that America was founded to create a government that serves the interests of all the public; that development requires regulation in the public's interest and he requested the Commission deny the proposal.

Ms. Janet LeDigabel spoke in opposition to the Application. Ms. LeDigabel stated the Traffic Study was performed during COVID, causing her to question its accuracy, as many people were staying home during that time; that she lives on Round Pole Bridge Rd.; that when accidents occur, many vehicles detour to Round Pole Bridge Rd.; that the answers provided to the Staff Review are incomplete with responses stating "noted" or by providing vague responses; that she mentioned open space concerns and lots located within the Flood Plain; that Round Pole Bridge Rd. is not up to County Code standards; that the adjacent properties will be stuck with a tar and chip road; that the taxpayers will be burdened with paying the cost prices increase to improve Round Pole Bridge Rd.; that she requested the Commission place a condition to improve the entirety of Round Pole Bridge Rd.; that staff had suggested an entrance from Rt. 1; that there are other developments with entrances off Rt. 1, being Greystone Manor, Fairway Village, Summerlyn, Bay Crossing, Sugar Maple Park, and others; that she suggested larger parcels should be proposed, to better fit the existing characteristics of the area, as well as to conserve the wooded areas and wetlands; that previously Lockhaven was denied for the proposal of 25 homes along Round Pole Bridge Rd.; that she suggested the developer sell a portion of the site to the County for open space, as previously performed for Hopkins Farms, Dawson Brothers and Dorman Farm Preserve; that Lots 78 through Lot 90 back up to Rt. 1, which is not considered a superior design; that she presented multiple photos from Round Pole Bridge Rd., the bridge located at Beaver Dam Creek, the flooding and poor road conditions of Round Pole Bridge Rd and Hudson Rd.; that she requested a condition be placed to keep all the mature woods, that notice be provided to future residents of the adjacent hunting activities, and she stated the proposed plan is not viable for the proposed location.

Mr. Wayne Leathem spoke in opposition to the Application. Mr. Leathem stated an archeological survey would be beneficial, as the property is located between Beaver Dam and Broadkill; that he felt the area was a prime location for Native Americans to live; that he had been in real estate for 42 years; that the property was sold without contingencies on government approvals; that previously this was always a contingency prior to settlement; that he felt developers are beginning to thumb their noses at the Commission and County Council, by threatening to sue; that he felt the Commission was afraid to be sued; that he felt the local government of Sussex County should get together to tighten up the subdivision Code and he does not feel the health, safety, and prosperity of the public is being addressed with the amount of development being approved.

Chairman Wheatley stated the Commission is not afraid of being sued; that the issue is with the way the Code is written; that the subdivision process does not allow for discretion from the Commission in the

way it is currently written, and County Council would be the body with the ability to change the current Subdivision Code requirements.

Ms. Randy Scheer spoke in opposition to the Application. Ms. Scheer stated she resides along Eagle Crest Rd.; that she previously submitted a letter to the Commission; that she supported the concerns previously expressed; that she questioned why an expert Airport Planner was not provided to comment on the project; that it is absurd that development of this size is proposed without any consultation from a professional aviation engineer, and an airport layout plan needs to be established, to guide how the builders on how they should proceed.

Mr. Brad Reed spoke in opposition to the Application. Mr. Reed stated he has resided on Round Pole Bridge Rd. for 43 years; that he had a personal stake in the marshlands adjacent to the site; that duck hunting is performed on the marshland; that the construction of the development will cause a significant personal and financial loss for himself and his brother, as they currently rent the property out for duck hunting; that with residential homes being located across the road, their hunters are required to aim in specific directions; that hunters are required to be located 100 yards from dwellings and 50 feet from any roadway; that the shots can travel up to 300 yards or more; that there are many types of soils located on the property; that he hoped consideration would be given to the soils and environmentally sensitive areas of the property, and he agreed with all the previous statements provided before him, with specific concerns relating to the road condition, increased traffic, flooding, and safety.

Mr. Ryan Reed spoke in opposition to the Application. Mr. Reed stated he is the brother of Mr. Brad Reed; that he also lived along Round Pole Bridge Rd., where he had lived for 43 years; that he and his brother own the marshland adjacent to the property, along Beaver Dam Creek; that their father owned the land for over 50 years before them; that the marshland is now part of an LLC and part of land preservation; that if they could no longer rent the property, it would be detrimental to their livelihoods; that their Eagle Crest counterparts previously testified that the airport and its uses existed first; that the hunting on their property took place first; that he agreed with the previously mentioned concerns relating to the woodlands, wildlife and sensitive areas on the site; that residents from the existing development, located across from the proposed site, frequently trespass by driving and walking through the field; that this causes him concern that future residents will trespass onto his property; that a steel shot, from a shotgun can travel up to 990 ft.; that the proposed minimum buffer of 50 ft. to 75 ft. will not cover the 990 ft. required for hunting; that he will no longer be permitted to rent his property for hunting purposes; that he and his brother own farmland, which they lease out; that he does not feel farm equipment will be able to navigate along Round Pole Bridge Rd., with no shoulder and the the amount of proposed traffic; that he submitted information obtained from research he performed relating to the Clean Water Action 401 State Certification of Water Quality and he requested the Commission require a substantial buffer of 1,000 ft be place with a fence, which would minimize trespassing, while allowing hunting to continue on their property.

Mr. Andrew Mugno spoke in opposition to the Application. Mr. Mugno stated he lived 4/10 mile from Round Pole Bridge Rd; that he previously submitted a letter to the Commission; that in the letter he stated, *I would like to express my disapproval as a homeowner on Hudson Rd., I feel that the traffic volume would be unbearable and the backroads cannot handle the volume we have now;* that the Commission have all traveled Hudson Rd. as it is a shortcut to go north or south; that a lot of testimony had been provided to the impacts of traffic on Round Pole Bridge Rd, however, no discussion had been provided for the traffic impact to Hudson Rd.; that he is a homeowner at Eagle Crest Aerodrome, which is one of the East Coast's residential airparks; that he is a pilot who flies respectfully, with the awareness of his neighbors; that having houses in the path and at the end of the active runway is very unwise; that the development will cause safety and noise issues for both homeowners and pilots; that emergencies

can happen; Eagles Crest Hudson Fields has been present since 1952; that consideration should be given to the fact aircrafts will be flying in low over the homes; that departing aircrafts will be noisy at all hours of the night and day; that potential buyers of the homes should be made aware of this in writing and that Round Pole Bridge Rd. is not an appropriate entrance location for the proposed development.

Mr. Nathan Kingree spoke in opposition to the Application. Mr. Kingree stated he had an emotional connection to the landscape of Sussex County; that when he drives to the beach, another field is sprouting a new crop of houses; that he requested the Commission look into their hearts, consider what everyone loves about Sussex County and decide what deserves to be saved and there had been a lot of good testimony as to why this property should be saved.

Ms. Pamela Rizzo spoke in opposition to the Application. Ms. Rizzo stated she resided along Round Pole Bridge Rd.; that the proposed development will be in her backyard; that the mosquitoes are horrible in the area; that she had great concern relating to traffic; that every time Hudson Fields hosts an event, everyone accesses the site from Round Pole Bridge Rd.; that Hudson Fields events do generate a lot of noise; that air flight across her house does not always come in a straight line; that she can tell the pilots are nervous to come in; that in the last three months, 15 to 20 helicopters flew in low, creating her home to rattle; that removing the mature trees is foolish, as it provides a mature buffer that surrounds the property; that the mature woodlands could be used for walking trails and open space, while preserving the existing wildlife; that she previously lived in West Virginia, where she watched everything get destroyed to coal mining, logging and anything else that could make money for other people; that due to this West Virginia suffered and now Sussex County is suffering because it is being let go.

Mr. Joe Larrimore spoke in opposition to the Application. Mr. Larrimore stated he was the past President of the Eagles Crest Homeowners Association; that years ago, they placed signs adjacent to the runway, along the highway, and along Eagle Crest Rd.; that the signs provided notification that there is an existing airport; that to his knowledge the developer never contacted anyone to discuss the Application and its relation of the airport; that when Pintail Pointe was being designed, the developer reached out to him to create assurance that no structures were proposed within the existing flight plan; that no consideration was given from the current developer and he felt it was time for the engineer to go back to the drawing board.

Mr. Mark Cammy spoke in opposition to the Application. Mr. Cammy stated he works in the automotive field; that two cars cannot pass at the same time on Round Pole Bridge Rd.; that he questioned what will happen, with the increased traffic in the event someone were to break down or when a school bus accesses the road; that when the cornfields are up, curves cannot be seen around; that on his way to the Commission meeting, he had to pull over, into the ravine to allow a tractor-trailer to pass and he questioned what a small vehicle would have done in that situation.

The Commission found that Ms. Eul Lee, Ms. Debbie Craft, Ms. Lindsey Taylor, and Ms. Judy Hysock spoke in opposition to the Application by teleconference with concerns relating to traffic, the location of lots within the Flood Plain, the potential fire hazards relating to tidal wetlands, light pollution onto adjacent properties and the removal of mature trees, as well as trees within the DelDOT right of way on Round Pole Bridge Rd.

Mr. Erikson stated if trees are located within the DelDOT right of way easement, and the area if needed to provide road improvements and/or drainage improvements, the Applicant would be required to remove the trees within that right of way. Mr. Erickson advised the Commission that he and the developer had been conversating via text message during the hearing; that they are proffered to place a No Right Turn sign at the entrance of the community, as well as design the entrance to prohibit no left

turn into the community; that by doing this, it will drastically reduce the number of trips down Round Pole Bridge Rd.; that this will force traffic to utilize Hudson Rd. and the proposal will change required contribution amounts, being a loss for the developer.

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

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

In relation to 2022-04 Twin Masts. Motion by Ms. Stevenson to defer action and to leave the Record open to ask the following questions of DeIDOT:

- 1. What is the acceptable level of service on Round Pole Bridge Road?
- 2. Is an entrance onto Route 1 possible and what would it take to accomplish that?

As well as, to allow a period of 15 business days for additional public comment on DeIDOT’s response once the announcement of receipt is made, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

ADDITIONAL BUSINESS

The Commission discussed potential 2023 County Council initiatives.

Meeting adjourned at 9:01 p.m.

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