

THE MINUTES OF THE REGULAR MEETING OF APRIL 27, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, April 27, 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, Ms. Holly Wingate, and Mr. Bruce Mears. Mr. Keller Hopkins was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Jesse Lindenberg – Planner I, Mr. Elliott Young – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that the Agenda had been amended to remove Mountaire Farms – Water Treatment System from Other Business.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Agenda as amended. Motion carried 4 - 0.

PUBLIC COMMENT

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

OTHER BUSINESS

(S-23-23) Grottos Pizza Corporate Office

Revised Final Site Plan

This is a Revised Site Plan for the establishment of a three-story, 13,860 square feet +/- corporate office for the Grottos Pizza restaurant chain, 70 parking spaces (including two (2) parking spaces to accommodate electric vehicle charging and parking,) and other associated site improvements. Specific revisions to the Plans include the removal of twelve (12) apartment units in lieu of an additional 6,290 square feet of office space, a reduction in the overall square footage of the Plans by 6,277 square feet (from 20,137 to 13,860 square feet), a reduction in at-grade square footage by 3,494 square feet, the addition of approximately 13 parking spaces from the previous proposal, and the relocation of the loading space to the southernmost portion of the site. The property is located within the Combined Highway Corridor Overlay Zone (CHCOZ). The Planning and Zoning Commission approved the Final Site Plan and Landscape Plan for the proposal at their meeting of Thursday, October 27th, 2022. The property is located on the east side of Bay Vista Road (S.C.R. 273A) and the south side of Coastal Highway (Route 1). The Revised Preliminary Site Plan applies with the Sussex County Zoning Code. Tax Parcel: 334-19.00-170.03. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Ms. Steven stated that since the plan is entirely commercial, she would like to see provided interconnectivity.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to approve the Revised Final Site Plan as a preliminary, with final approval to be given by the staff contingent upon the placement of a cross-access easement and upon receipt of all agency approvals. Motion carried 4-0.

(S-23-17) Rehoboth Marketplace

Revised Final Site Plan

This is a Revised Site Plan for the construction of a proposed 3,062 square foot +/- restaurant, 400 square foot +/- patio, a total of 30 parking spaces, and other related site improvements on a 0.23 acre +/- portion of an existing commercial site containing 8.63 acres +/- . The property is located on the north side of Airport Road, the south side of Coastal Highway (Route 1), and the southeast side of Miller Road (S.C.R. 270A). The property is located within the Combined Highway Corridor Overlay Zone (CHCOZ). The Applicant has submitted a request to waive the requirements of the CHCOZ which require a 60-ft front setback and a 20-ft landscape buffer as well as to permit the proposed seven (7) parking spaces to be located within the front yard setback. Staff would like to note that the CHCOZ waiver should be submitted to the Sussex County Board of Adjustment as opposed to the Commission and the plan does not meet the parking requirements, being 60 spaces for the proposed plan. The Revised Final Site Plan otherwise complies with the provisions of the Sussex County Zoning Code. Tax Parcel: 334-13.00-325.12. Zoning: C-1 (General Commercial District).

Mr. Young stated the plan is considered a revised Final Site Plan, as it is part of the parcel that already has a commercial center as a part of it.

Ms. Stevenson questioned if the Commission should make a motion on the plan, as it is required to present before the Board of Adjustment.

Mr. Whitehouse stated that staff had discussions regarding this with the Applicant; that staff did bring the plan to the Commission for discussion, as there are many variables to the plan; that the plan will be required to go before the Board of Adjustment for any relief request from the CHCOZ; that the second variable is the reduction in parking; that additionally, there is no landscaping proposed in the plan; that the plan is only before the Commission for discussion purposes and staff would request that the Commission take no action.

Mr. Young stated there had been discussions with staff regarding a potential Shared Use Agreement for the parking lot located to the south, but nothing had been submitted to the office yet.

Chairman Wheatley stated the plan needs to come back in a form that conforms to Ordinance, or the Applicant needs to provide some compelling reasoning why it should not conform to the requirements.

The Commission agreed to take no action on (S-23-17) Rehoboth Marketplace.

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

Revised Preliminary Subdivision Plan

This is a Revised Preliminary Subdivision Plan for a Coastal Area cluster subdivision to consist of thirty-six (36) single-family lots with private roads, open space, and proposed amenities to include a pavilion with a fire pit, bocce ball courts, pickleball courts, and walking paths. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, January 12th, 2023, for 36 lots. The property is located on the south side of Waterview Road (S.C.R. 279A) and Camp Arrowhead Road (S.C.R. 279), approximately 0.17 mile east of the intersection of Camp Arrowhead Road (S.C.R. 279) and Waterview Road (S.C.R. 279A). The Revised Preliminary Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax

Parcel: 234-12.00-22.31. Zoning: AR-1 (Agriculture Residential District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Subdivision Plan as a preliminary. Motion carried 4-0.

(S-23-13) Embleton Event Venue (C/U 2319)

Preliminary and Final Site Plan

This is a Preliminary and Final Site Plan for the Embleton Event Venue (S-23-13) for the use of an existing 3,900-square-foot building for a proposed salon and event venue, parking, and related site improvements. Conditional Use (C/U 2319) was approved by Sussex County Council on Tuesday, October 18th, 2022, through Ordinance No. 2890. The parcel is located on the south side of Memory Road (S.C.R. 613). The Preliminary and Final Site Plan comply with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 430-3.00-20.08. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

(S-23-11) Lands of Jase, LLC

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 9,960-square-foot commercial building for retail and office use and other site improvements. The parcel contains 1.24 acres +/- and is located on the north side of Lewes Georgetown Highway (Rt. 9). The applicant has submitted a waiver requesting relief for parking within the Front Setbacks. The Revised Preliminary Site Plan applies with the Sussex County Zoning Code. Tax Parcel: 334-10.00-199.00. Zoning: B-2 (Neighborhood Business District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals. Additionally, there were notes of interconnectivity to the adjacent parcels to the east and west; that staff requested clarification on the proposed material to be used and information regarding the removal of the parking spaces within those areas at that time interconnectivity is required.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary with final approval to be given by the staff contingent upon provided interconnectivity, surfacing information, and upon receipt of all agency approvals. Motion carried 4-0.

(S-23-18) Puras Commercial Center

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 8,000 square foot 2-story commercial building for retail use on the first floor and office use on the second floor, the addition of a one-way drive lane located to the rear of the proposed building and other site improvements. The parcel contains 2.66 acres +/- and is located on the north side of Atlantic Avenue (Route 26). The Planning and Zoning Commission approved the Preliminary Site Plan with final approvals to be made by staff upon the receipt of all agency approvals at their meeting of Thursday, August 27th, 2015. Since this approval, only Phase One of the previously approved Site Plan has been constructed. The Revised Preliminary Site Plan applies with the Sussex County Zoning Code. Tax Map Parcel: 134-11.00-178.00. Zoning: CR-1 (Commercial Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Ms. Wingate stated that she cannot speak to her concerns, as approval was already provided to the original design within Phase 1; that she would appreciate consideration be given to the access road and the concrete loop; that the area is awkward for the traffic coming in and out; that with the additional traffic from the new building and the additional parking in the back, will worsen the issue, and she hoped the engineer would considered eliminating the concrete landscape loop area when bringing back the plan for final.

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

(2022-11) Hunter's Creek

Request of Clarification for Conditions of Approval

The Planning and Zoning Department has received a request for clarification of a Condition of Approval that has been established for the Hunter's Creek Subdivision Plan (2022-11). Specifically, the Applicant has requested further information to determine if emergency access complies with Condition "G" which states, *"There shall be vehicular entrances to this development via both Omar Road and Hickory Manor Road. The development shall comply with all DelDOT entrance and roadway improvements requirements associated with the Omar Road and Hickory Manor Road entrances."* Further to the preliminary approval that the Planning and Zoning Commission granted on September 8th, 2022, the Applicant has a tentative proposal that has been outlined in the letter from Plitko, LLC, dated April 17th, 2023. It is requested that the Commission clarify whether this proposal meets the requirement of Condition "G." Staff note that a request to **"amend"** Condition G was previously reviewed by the Planning and Zoning Commission at their meeting of Thursday, November 3rd, 2022, and this request was denied. The Minutes from that meeting have been provided in the published packet. The most recent revision of the Subdivision Plan has also been provided. Tax Parcels: 134-11.00-102.00 & 103.00. Zoning: MR (Medium Density Residential Zoning District).

Ms. Stevenson stated she recently attended a meeting with the head of emergency services for Sussex County; that emergency services have a goal to arrive to emergencies from the 911 call to the citizen's door in under eight minutes; that within the last year, the arrival time has gone from four minutes to 7.47 minutes, because emergency personnel cannot get through traffic; that he stated there is little interconnectivity, vehicles parking on the streets, speed bumps and gates are being placed creating difficulty when trying to get to emergencies; that the issue is becoming very difficult to deal with and it is risking people's safety.

Mr. Mears stated Ms. Stevenson's statements were the exact reason the Commission required a second entrance.

Ms. Wingate stated she agreed with Ms. Stevenson and Mr. Mears.

Motion by Mr. Mears, seconded by Ms. Wingate to deny the request for clarification of the Conditions of Approval. Motion carried 4-0.

Lands of Bulton Properties LLC

Conceptual Preliminary Minor Subdivision off a 25-foot Easement

This is a Conceptual Preliminary Minor Subdivision Plan for the subdivision of a 4.438 acre +/- parcel of land into four (4) lots and residual lands off a 25-foot ingress/egress access easement. Proposed Lots 1, 2, 3, and 4 each consist of 0.750 acres +/- and the residual lot consists of 1.389 acres +/- . The property

is located on the south side of Stockley Road (S.C.R. 280). The Preliminary Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-5.00-26.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Mr. Whitehouse advised because of the number of the lots, staff do not have a maintenance agreement or a grading plan within the current conceptual plan; that the lots are below an acre in size; that if the Commission were happy with the width, staff would work with the Applicant to obtain the agreement; that staff has been pushing for grading plans for minors containing multiple lots less than an acre.

Mr. Robertson stated when people begin changing the grade it can cause flooding issues to adjacent properties.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Conceptual Preliminary Minor Subdivision off a 25-foot easement as a preliminary, with final approval to be given by the staff upon receipt of all agency approvals and submission of a Maintenance Agreement and Grading Plan. Motion carried 4-0.

Lands of Phyllis L. Collick

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision for the subdivision of a 2.68-acre +/- parcel of land into two (2) lots to include the residual lands. Proposed Parcel "A" consists of 1.39 +/- acres with the residual lands consisting of 1.28 +/- acres. The property is located on the east side of Gravel Hill Road (Route 30) in Milton, Delaware. A shared use maintenance agreement shall be established for the maintenance of the shared driveway which will serve Parcels 15.00, 15.01, 15.02, and proposed Parcel "A." The Minor Subdivision complies with the Sussex County Zoning and Subdivision Code. Tax Parcel: 235-25.00-15.00. Zoning: AR-1 (Agricultural Residential District). Staff are in 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 preliminary, with final approval to be by the staff subject to the receipt of a Shared Maintenance Agreement. Motion carried 4-0.

OLD BUSINESS

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 the application's public hearing was held on March 9, 2023, in which the Commission deferred action. Mr. Whitehouse stated a written request was received on April 19, 2023, by the Applicant's representative requesting to withdraw the 2022-04 Twin Masts application.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to accept the request to withdraw the application for 2022-04 Twin Masts. Motion carried 4-0.

2022-08 Walden III

A Coastal Area cluster subdivision to divide 24.136 acres +/- into twenty-one (21) single-family lots, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the northeast side of the intersection of Sloan Road (S.C.R. 49) and John J Williams Highway (Route 24). 911 Address: N/A. Tax Map Parcel: 234-17.00-29.00. Zoning District: AR-1 (Agricultural Residential) and MR (Medium-Density Residential).

The Commission discussed the application which has been deferred since March 23, 2023.

Ms. Stevenson moved that the Commission recommend approval for 2022-08 Walden III based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the AR-1 and MR Zoning Districts.
2. The Applicant is seeking lots with a minimum area of 11,989 square feet. The largest lot is 50,010 square feet in size. The average lot size is 23,655 square feet.
3. As stated by the Applicant, the proposed subdivision will have no more than 21 lots on 24.136 acres. This results in a low density of .87 lots per acre.
4. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan. The proposed project complies with the Comprehensive Plan and Zoning Code.
5. The proposed development will comply with all DelDOT roadway entrance requirements.
6. There will be a 30-foot buffer around the site adjacent to wetlands.
7. The proposed subdivision contains approximately 11 acres of open space, which represents about 46% of the entire site.
8. There are state and federal wetlands on this site. All regulated wetlands will be preserved.
9. The project will be served by central water and sewer.
10. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision. Most of the lots are established in areas that were previously tilled, with little tree removal required for the development of this project.
11. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last. Given the layout of this particular parcel and the roads and wetlands that are adjacent to it, this is a good design that results in a relatively low density of .87 lots per acre.
12. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
13. This preliminary approval is subject to the following:
 - a. There shall be no more than 21 lots within the subdivision.
 - b. The Final Site Plan shall confirm that approximately 46% of the site remains as open space.
 - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas. The homeowner's association shall also maintain the small cemetery located within the development and allow public access to it.

- d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- e. There shall be a buffer of at least 30 feet from all wetlands. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited unless indicated on the Final Site Plan. All silt fencing shall be located along the interior limit of this buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area except as noted on the Final Site Plan.
- f. The development shall comply with all DeIDOT entrance and roadway improvement requirements.
- g. As shown on the Preliminary Site Plan, sidewalks shall be installed on both sides of all internal streets with a connection to the DeIDOT multi-modal path. A system of downward screened streetlighting shall also be provided.
- h. Amenities proportionate with, and appropriate for, these 21 lots shall be installed within this site. A separate Amenities Plan shall be submitted to the Commission describing the type, size, and location of these amenities. The Applicant has stated that amenities throughout the entire Walden development including the Walden development across Route 24 and Sloan Road shall be accessible to these 21 lot owners. There was significant testimony from residents within these other areas that these new lots would overburden the yet-to-be-fully completed amenities within the larger Walden development. No building permits shall be issued until all shared amenities within the entire Walden development are completed.
- i. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- j. Street design shall meet or exceed Sussex County standards.
- k. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- l. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Saturday. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- m. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within this site, and there shall be sufficient off-street parking near the entrance to this site dedicated to school bus pickup and drop off. If required by the school district, the location of the bus stop and parking area shall be shown on the Final Site Plan.
- n. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- o. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots 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.

- p. The Developer shall coordinate with DeDOT to install crosswalks across Sloan Road at the entrance to this subdivision and Analiza Drive.
- q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant preliminary approval of 2022-08 Walden III for the reasons and conditions stated in the motion. Motion carried 4-0.

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

PUBLIC HEARINGS

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

2022-29 Lands of Theresa Clagg

A standard subdivision to divide 5.292 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County. The property is lying on the southwest side of Clagg Road, via a 50-foot easement on the south side of Neal School Road (S.C.R. 553). 911 Address: 3764 Clagg Road, Seaford. Tax Map Parcel: 531-5.00-29.10. Zoning District: GR (General Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Soil Evaluation Report, the DeDOT Letter of No Objection, a copy of the Staff Review Letter, and the Sussex Conservation District's Letter of No Objection. Mr. Whitehouse advised the Commission that the submitted Conceptual Subdivision Plan has no topography or buffers shown, therefore the Applicant is requesting waivers to the topography and buffer requirements. Mr. Whitehouse advised the Commission that the Application received two mail returns and no comments.

The Commission found that Ms. Theresa Clagg spoke on behalf of her application. Ms. Clagg stated when coming off the road, near the cul-de-sac, is the location of her home; that her son plans to build a home on the approximate two acres of land behind her, that the area is set between two ditches; that there is plenty of room for the home her son is proposing to place and is the reasoning and location for the proposed subdivision.

Ms. Stevenson questioned if a maintenance agreement would be put into place, to designate who would be responsible for maintaining the road, should her son no longer live there and she recommended if not, that an agreement be placed in writing for the future.

Ms. Clagg stated the family currently maintains the road; that her brother-in-law currently lives behind her; that her neighbors purchased the property which once belonged to her husband's twin brother; that collectively they take care of the road; that they currently do not have an agreement in place; that the road is currently owned by her and her neighbor in a dual deed and they do have a speed limit sign in place to slow vehicles down to avoid destruction of the road.

Chairman Wheatley questioned if the land the road is located on is deeded to both her and the neighbor or if there was a cross-access agreement in place and he questioned if the people living behind her had permission, in writing, to use the road.

Ms. Clagg stated both she and her neighbor own the road per the deed and the neighbors living behind her do not have written permission to use the road.

Chairman Wheatley stated that conditions would need to be placed to ensure written documents are prepared to memorialize how the driveway is to be maintained and who would have the legal right to use the driveway prior to the subdivision and he explained it would be for Ms. Clagg's protection.

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

Mr. Robertson stated he had prepared a motion per the request of the Commission.

Mr. Robertson read the prepared motion into the record per the Commission's request.

The Commission moved that preliminary approval of 2022-29 The Lands of Theresa Clagg, be granted based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned GR which permits lots with a minimum size of 10,000 square feet. The proposed subdivision density of 2 lots on 5.292 acres of land is significantly less than the allowable density. One of the lots will be 1.624 acres and the remaining lot will be 3.668 acres in size. Both of these lots significantly exceed the minimum lot size permitted in the GR Zone.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This small subdivision satisfies the criteria set forth in Section 99-9C in the Sussex County Subdivision Code.
7. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 2 lots within the subdivision.
 - B. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots 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.
 - C. The Final Site Plan shall include a maintenance agreement for the perpetual maintenance of the private roadway serving both of these new lots.

D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to grant preliminary approval of 2022-29 Lands of Theresa Clagg for the reasons and conditions stated in the motion. Motion carried 4-0.

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

2022-30 Lands of Whites Creek, LLC

A Coastal Area standard subdivision to divide 3.05 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the west side of Piney Point Lane, approximately 0.35-mile west of Cedar Neck Road (Route 357). 911 Address: 38088 Old Piney Point Road, Ocean View. Tax Map Parcel: 134-9.00-57.00. Zoning District: GR (General Residential).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the property deed, the Preliminary Subdivision plat, a DeIDOT Letter of No Objection, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that the site topography is shown, however, there is a waiver request from the forested buffer requirements. Mr. Whitehouse advised the Commission that the Application received two mail returns and zero comments.

The Commission found that Mr. Jeff Townsend, Manager of Whites Creek, LLC, spoke on behalf of his Application; that also present was Mr. Adam Jones with Becker Morgan Group, Inc. Mr. Townsend stated that the property has belonged to his family since the 1960s; that he currently owns a property adjacent to the site, which previously belonged to his grandmother and he requested to subdivide the property, to provide properties for his two sisters who desire to move to the area.

Mr. Mears stated the Application seemed straightforward and mentioned the Application would require a shared use agreement for the road.

Ms. Wingate suggested proper street signs be placed for 911 addressing purposes as she had difficulty locating the proposed site and mentioned she never did find the sign for Old Piney Point Rd.

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

Mr. Robertson stated he had prepared a motion per the Commission's request.

Mr. Robertson read the prepared motion into the record per the Commission's request.

The Commission moved that preliminary approval of 2022-30 Lands of Whites Creek, LLC, be granted based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned GR which permits lots with a minimum size of 10,000 square feet. The proposed subdivision density of 2 lots on 3.05 acres of land is significantly less than the allowable density. One of the lots will be 2.07 acres and the remaining lot will be .98 acres in size. Both of these lots significantly exceed the minimum lot size permitted in the GR Zone.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This small subdivision satisfies the criteria set forth in Section 99-9C in the Sussex County Subdivision Code.
7. No parties appeared in opposition to this application.
8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 2 lots within the subdivision.
 - B. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots 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.
 - C. The Final Site Plan shall include a maintenance agreement for the perpetual maintenance of the private roadway serving both of these new lots.
 - D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to grant preliminary approval for 2022-29 Lands of Theresa Clagg for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/Z 1986 JKJ Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.22 ACRES, MORE OR LESS.

The property is lying on the north side of Johnson Road (S.C.R. 207), approximately 0.12 mile east of DuPont Boulevard (Rt. 113). 911 Address: 18017 & 18033 Johnson Road, Lincoln. Tax Map Parcel: 130-6.00-115.00.

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

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, LLC spoke on behalf of the Applicant, JKJ Properties, LLC; that also present was Mr. Jim Weller, the

managing member of JKJ Properties, LLC. Mr. Davidson stated that Mr. Weller may also be known as the owner of Weller Utility Trailers, located outside of Bridgeville, Delaware, and he is also the host of the Weller Does Delmarva live broadcast on 105.9 FM News Talk; that the application is requesting approval to rezone the land being within AR-1 (Agricultural Residential) zoning district, located on 1.22 acres, on the north side of Johnson Rd., approximately 300-ft. east of DuPont Blvd., within Cedar Creek Hundred; that the Applicant is requesting to rezone the property to C-2 (Medium Commercial) Zoning; that the property was purchased by Mr. Weller on November 5th, 2021; that Mr. Weller additionally owns the properties out front, along Rt. 113; that Mr. Weller purchased his first property at 16 years of age and he had worked at that property since the age of nine; that he later purchased the corner commercial property, which is located adjacent to the subject property; that the property is bordered on the south by Johnson Rd., which is a major collector road; that the property is bordered on the north and east side by some AR-1 (Agricultural Residential) zoned lands; that Mr. Weller owns to the adjacent property to the west, which is zoned C-1 (General Commercial) and currently being the location for Stokely Materials; that in Ordinance 2550, Sussex County Council desired to create a more specific C-2 (Medium Commercial) Zoning District, with smaller, more related uses within the district to promote better planning and predictability in Sussex County; that the purpose of the C-2 (Medium Commercial) district is to support uses that include retail sales, performance and consumer services, that permit a variety of retail, professional and services businesses; that the Ordinance states the district shall be primarily located near arterial and collector streets, while accommodating community commercial uses that do not have outside storage or sales; that granting the request to rezone to C-2 (Medium Commercial) will allow Mr. Weller to expand his existing commercial use, located on Rt. 113, which will allow him to continue his business plan to create quality commercial flex space, that will focus on customers from the nearby and existing future communities; that in the property's present state, Mr. Weller anticipates the ability to lease the property to small contractors, plumbers, and electricians, with the right to utilize the existing buildings and the property for office and inside storage; that currently the property is being leased for residential use, as there are two single-family dwellings on the property; that there are storage buildings located to the rear of the property; that there are currently two addresses listed for the property; that the property is located within the vicinity of other commercially zoned properties and uses; that they feel the rezoning would not diminish or impair property values within the neighborhood, will not create a public nuisance or result in any increase in public expenditures; that the property is identified to be in an area classified as Low Density per the 2019 Sussex County Comprehensive Plan; that the property is located to adjacent commercial properties, as well as, located adjacent to other developing areas; that the Sussex County Plan suggests that each application should be reviewed on its own merit, and does not have a negative impact on the surrounding area or the County in general; that Mr. Weller does own the adjacent properties, which are the current locations for Stockley Materials and Bean's Attic, LLC retail and antique shop; that the property is located in an area that has traditionally been used for both commercial and industrial uses; that located on the submitted aerial zoning map of the area, the grey colored area, located within the upper right-hand corner, reflects Industrial Zoning; that the Industrial zoned areas are the location of the Fitzgerald Savage yard; that there is a B-1 (Neighborhood Business) property located directly across the street; that located across Johnson Rd. is a property subject to a Conditional Use for an auto repair shop; that although the Town of Lincoln is not incorporated, the subject property is part of the Lincoln community, being just west of the Town Center of Lincoln; that the property is located along a major collector road, which according to DelDOT's Highway Functional classification; that additional right of ways and easements will be dedicated during final planning for the property; that DelDOT did not require a Traffic Impact Study (TIS); that the focus for the retail and offices uses within the Low Density areas is to provide convenience goods and services to the nearby residences; that since the Comprehensive Plan is a guide for the future use of land, the County's Zoning Map must be consistent with the uses and intensities of

uses provided in the Future Land Use Plan; that Table 4.5-2 is provided as a tool for assisting; that C-2 (Medium Commercial) is an applicable zoning district within the a Low Density area; that the 2020 Strategies for State Policies and Spending indicate the property is located within Investment Level 3; that the property is not a stand-alone commercial property, as it is located adjacent to other properties owned by Mr. Weller; that there are no wetlands located on the property; that the property is located within Flood Zone X; that there are no historical or natural features located on the site; that stormwater will be placed on the site, using all best management practices, as well as, meet all the minimum requirements State requirements for stormwater management, until central sewer is located in the Lincoln area; that the site will utilize an on-site sanitary sewer system within the property; that the wells located on the property will all be permitted by DNREC; that the proposed rezoning meets the general purpose of the Zoning Ordinance; that the site is located in an appropriate location, by meeting the purpose of the district, the Future Land Use Plan, and the strategies and objectives of the Comprehensive Plan; that the proposed rezoning promotes growth and development through community design, mobility, utilities, transportation and economic development in an area where a general mixture of commercial and service activity now exists and is essential and desirable for the general convenience, orderly growth, prosperity and welfare of the County.

Ms. Stevenson questioned if anyone lived in the existing dwellings on the site.

Mr. Davidson stated that there are current residents residing in the existing dwellings on the site; that should the property be rezoned to C-2 (Medium Commercial), the properties cannot be used for residential; that this was Mr. Weller's reasoning for proposing placing smaller contractors in the buildings along the front, allowing the use of the storage buildings located to the rear of the property, which is ideal for a smaller contractor to utilize.

Mr. Mears stated he felt the site location was ideal for the proposed zoning, especially being located adjacent to Stockley Materials.

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

The Commission found that Ms. Iris Payne spoke by teleconference with concerns regarding the potential increase in traffic along Johnson Rd. if the rezoning was approved.

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

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

Mr. Robertson stated he had prepared a motion per the Commission's request.

Mr. Robertson read the prepared motion into the record per the Commission's request.

The Commission moved to recommend approval of C/Z 1986 JKJ Properties, LLC for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 "Medium Commercial" zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.

2. The Applicant's property is currently zoned AR-1 along Route 113, near the intersection with Johnson Road. The property is adjacent to the property at the intersection that is zoned C-1 and other properties at the intersection are zoned C-1, HI, and B-1. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location along Johnson Road near its intersection with Route 113 will benefit nearby residents of Sussex County by providing a convenient location for the uses permitted in that Zone.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is mostly in the "Low-Density Area" according to the Sussex County Land Use Plan and Future Land Use Map. C-2 Zoning is appropriate in Low-Density Areas according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to recommend approval of JKJ Properties, LLC for the reasons stated in the motion. Motion carried 4-0.

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

Recess

4:03 – 4:33

2021-23 Stillwater Harbor

A Coastal Area cluster subdivision to divide 57.107 acres +/- into one hundred and twenty-three (123) single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the north side of River Road (S.C.R. 312), approximately 0.3 miles northwest of Chief Road (S.C.R. 311). Tax Parcels: 234-34.00-79.00, 234-34.11-9.00, 234-34.11-9.01 & 234-29.00-226.01. Zoning: MR (Medium-Density Residential District) and GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's original Preliminary Subdivision Plan, the superseded Preliminary Subdivision Plan, which replaced the original plan, the Applicant's Exhibit Booklet which includes the Total Buffer Plan, Wetland Survey and the Applicant's Chapter 99-9C response, the PLUS comments and the Applicant's response to the PLUS comments, the Applicant's Geotechnical Report, the DNREC Coastal Engineering Evaluation, site photos submitted by the Applicant, the Staff Review Letter and the Applicant's response to the Staff Review Letter, letters from the Delaware Department of Transportation (DelDOT), Sussex County Engineering Department Utility Planning Division, Delaware Department of Agriculture, the Technical Advisory Committee (TAC) comments, which include a letter from the U.S. Fish & Wildlife, Delaware Electric Cooperative, the Delaware Forest Service, the DNREC Division of Watershed Stewardship, DNREC Division of Waste and Hazardous Substances, and the Delaware State Fire Marshal. Mr. Whitehouse advised the Commission that the Application received 110 letters in opposition, zero letters of support, two comment letters of a neutral stance, and three petitions in opposition, containing a total of 1,646 signatures by staff count and he advised the Commission that from the opposition letters received, some did appear to be duplicates.

The Commission found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, was present on behalf of the Applicant, Stillwater Harbor, LLC; that also present were Applicant representatives, Ms. Megan Conner and Mr. Hal Stewart. Ms. Peet stated that also present were team members, Mr. Jim Erikson, P.E. with Solutions IPEM, LLC, Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc., Mr. Gregory Sauter, P.E. and Vice President of Geo-Technology Associates, Inc., Ms. Betty Tustin, P.E. and PEOE with The Traffic Group and Ms. Mary R. Schrider-Fox the Developer's attorney who's office represented the Applicant in the purchase of the properties and will handle the Applicant's Homeowners Association (HOA) governing document drafting. Ms. Peet stated that the Applicant proposes Stillwater Harbor to divide four undeveloped parcels, containing a gross site area of 57.107 acres +/- into 123 single-family lots as major subdivision, being located within the MR (Medium-Density Residential) and GR (General Residential) zoning districts; that the Application will employ the cluster option as provided in §115-194.3 of the Sussex County Zoning Ordinance, which she will refer to as "the Code" throughout her presentation; that the project proposes 26.94 acres (47.2%) of open space for the site, subject to final engineering; that the project proposes voluntary tidal and non-tidal buffers, as applicable, from the 2.952 acres of non-tidal wetlands and 2.450 acres of tidal wetlands located on the site; that the wetland areas are not proposed for development and will remain untouched; that the plan proposes a restriction on the use of 10.6 acres of marshland, natural forest areas, and the afforestation of a portion of the property, totaling 1.7 acres; that this will result in a total of 12.01 acres of forest and natural areas to remain; that the plan provides for amenities to include a pool and pool house to be located toward the front of the community, and a wood chip trail system to be located within the wooded area of the site; that the project is located on the north side of River Rd., at the intersection of Wheatley Lane in Millsboro; that the subject area is commonly known as Oak Orchard; that Oak Orchard has a rich history being associated with the Nanticoke community and the Clark and Harmon families specifically; that in the early 1900s through 1970s, it was the location for Rosedale Beach and Resort, a hotel and resort which operated in the pre-integration era of the 20th century, where there were very few places for people of color to go for entertainment and hotel accommodations; that Rosedale Beach became a destination point for many people along the East Coast; that Rosedale Beach was officially incorporated on April 14, 1937; that Rosedale Beach included a hotel, boardwalk, dance hall, picnic and beach area, campground and an amusement park; that well known artists, such as Louis Armstrong, James Brown, Cab Calloway, Aretha Franklin and Stevie Wonder previously played at the resort; that once Delaware integrated its beaches, hotels and other public facilities, visitation of the beaches declined; that the boardwalk was destroyed by the storm of 1962 and it was not replaced; that the Rosedale Beach hotel and resort was sold in 1983; that currently the Oak Orchard community is primarily composed of single-family homes, mobile home parks and agricultural lands; that title research confirmed that a portion of the site was historically owned by Mr. Charles Cullen, who purchased a roughly 72 acre portion of land in the 1930s, which consisted of the subject site for farmland; that later in the 1930s the farm was sold to a member of the Harmon family; that in 1956 the land sold to Mr. Isaac Jackson; that the land was owned by members of the Jackson family until the land was purchased by Compass Point, LLC in 2021, which later transferred to its current owners, Stillwater Harbor, LLC; that the parcel seems to be dominated by mature growth forest, however, in actuality, a large portion of the property was historically farmed and would be discussed by Mr. Launay; that the development includes four parcels; that Parcels 79.00, 9.00 and 9.01 are currently owned by Stillwater Harbor, LLC; that Parcel 26.01 is currently owned by Millsboro Holding Company; that the majority of Parcel 79, consisting of 53 acres that is forested, is subject to split zoning; that the split zoning consists of MR (Medium Density Residential) zoning toward the front and GR (General Residential) zoning toward the back of the property; that the main site entrance will be located off River Rd.; that DelDOT encouraged the developer to contact the neighboring property owner, Ms. Ida

Wheatley, to discuss the potential reconfiguration of her entrance for the purpose of providing access to her properties through the proposed emergency entrance; that the developer did contact Ms. Wheatley, as evidenced in Exhibit 21; that the letter dated March 3, 2021, from the Indian River Fire Company reflects raised concern regarding emergency access to the site as a result of flooding on River Rd.; that after a series of discussions with the Indian River Fire Company, the applicant explored options for emergency access to the site; that as a result, the Applicant acquired Parcel 226.01; that an emergency access is proposed over and across Parcel 226.01 and subject to a 50-ft. wide recorded easement; that the easement is recorded in Book No. 54, Page No. 100; that the easement connects to Jackson Draine Lane and then onto Oak Orchard Rd.; that she submitted into the record, the Applicant's proposed Conditions of Approval which contain Conditions A through W; that a mentioned concern in a submitted letter of opposition stated the placement of a gate would control access to his property; that the proposed gate will be placed as shown on the Preliminary Site Plan; that the same property owner had expressed concern with potholes and the unimproved lane as an eight to ten foot wide easement; that the easement record reflects that the easement area is 50-ft. wide; that they did meet with the Indian River Fire Department multiple times, presenting the proposed emergency access plan; that the fire department stated the proposed emergency access plan was sufficient for their use; that the developer is agreeable to discussing any desired and reasonable improvements or long term maintenance obligations with other homeowners that benefit from the use of the easement; that the developer additionally intends to plant 1.7 acres of forest for the purpose of adding forest and for additional privacy to residents living behind the site; that regarding emergency access, proposed Condition K states, "*the development shall have an emergency access to and from the development at a point along Jackson Draine Lane, where Jackson Draine Lane intersects the site; that the access shall be used for emergency purposes only and shall not be used for regular routine ingress and egress to the site by community residents; that this emergency access shall be shown on the Final Site Plan; that the emergency access shall be secured by a gate with a Knox Box, or similar device, to accommodate emergency access, controlled by the community's Homeowners Association, the local fire department and other emergency providers;*" that the surrounding area is developed residentially, with some lands being commercially developed within the vicinity of the site along Rt. 24; that nearby subdivisions include Riverdale, Warwick Place, Captains Grant, Orchard Manor, Oak Meadows, Driftwood Village and the recently approved Plover Point; that some of the surrounding communities are characterized as medium to higher density developments compared to the proposed Stillwater Harbor development; that the proposed density for Stillwater Harbor is 2.25 units per acre, located in districts that permit a density of 4.36 units per acre or a total of 238.3 units for the site; that the Applicant is currently proposing 123 units, being 115.3 homes less than the permitted density by Code; that there were site constraints that contributed to the reduction, but it is significantly less than what is permitted; that letters of opposition were submitted by neighbors and property owners who characterized themselves as solely farmers, despite the residential developments constructed by those farmers; that the farmers could also be characterized as developers and landlords; that the specific development, Riverdale Park, is located within the 100 Year Floodplain and is a pre-existing community with limited, if not nonexistent, stormwater management; that although previous records are not great, the team learned that there was, what they believe, to be approximately 400 to 500 mobile homes within the community and is visually apparent in the area; that the community is densely developed; that she does not use the word developer or landlord in any negative connotation; that she only wished to state the obvious, that opposition letters were submitted by neighbors who are farmers, but who also happen to be developers; that just as those lands were developed in compliance with the then existing or non-existing regulations, the Applicant currently seeks approval of a development that is Code compliant, proposing a lower density community than what is currently permitted by Code, sensitive to environmental conditions and proposes a stormwater management plan designed to comply with State requirements; that the project's Concept Plan was presented to PLUS on June 10th, 2021; that

a letter was subsequently provided to PLUS, addressing the PLUS comments point by point; that the Preliminary Plan was placed through the Technical Advisory Committee (TAC) process; that despite comments received during the PLUS and TAC processes, updated comments were received from the Department of Agriculture within the past week; that she had the opportunity to speak with the Secretary by phone on April 25, 2023; that during their very brief call, the Secretary shared that his department was concerned about developmental impacts on the Inland Bays, the wetlands, forest and to drainage issues; that she was surprised to receive the letter from the Secretary, dated April 20, 2023, which was uploaded to the Sussex County online land use docket on April 24, 2023, being three days before the current public hearing and being after receipt of any and all agency comments received during the PLUS and TAC process; that during her call with the Secretary, she attempted to explain that the proposed plan preserved wetlands, portions of marshland, and natural forest; that it remains to be seen if the department reviewed the paper record submitted on April 17, 2023, for the Application; that the department's letter of April 2023 was inconsistent with the with the letter previously submitted by the Department of Agriculture on October 21st, 2021, and also inconsistent with what the current paper record reflects, as well as, its compliance with the County Code; that the letter from October 1, 2021, confirmed the February 21, 2021 plans compliance with the former Buffer Ordinance applicable to the regulation of plantings and specification for those and invasive species considerations; that she submitted the letter received from October 1, 2021; that within the 2021 Delaware Inland Bays Comprehensive and Management Plan, it is explained that Delaware Inland Bays are considered three shallow interconnected coastal lagoons that separate them from the Atlantic Ocean; that the Inland Bay Watershed comprises approximately 292 square miles of eastern Sussex County; that noted in that plan, and based on 2012 estimates, land use and land cover in the watershed is 31% agriculture; that this includes crops, orchards and pastures; that 17% is forest, including brush; that 28% is water, which include the bays, being specifically Rehoboth Bay, Indian River Bay, Little Assawoman Bay, wetlands and barren areas; that 24% is developed lands; that the plan notes that one of the continuing challenges to meet nutrient goals is not only new developments, but also agriculture and stormwater related issues; that she could speculate as to other reasons the Department of Agriculture submitted the April 20, 2022, letter into the record, but ultimately, the focus is to apply the facts of the Application to the law that applies; that the Secretary's letter provides little, if any weight, on the particular issue as the letter raised no issue with the proposed plans compliance with the Code; that the team understands the Secretary and the departments interest in conserving open space and farmland, however, it appeared the department missed the mark; that to conclude her point, she stated the department had been silent since October 21, 2021, being almost a year and a half ago, then submitted a letter a week before the public hearing, that was uploaded to the County's online land use docket four days before the hearing; that the April 2023 letter is inconsistent with the previous comments provided by the department; that in contradiction to what the department's letter stated, the wetlands are being preserved, so much so, that non-tidal and tidal wetland buffers comply with the recently adopted Drainage and Resource Buffer Ordinance, by using the buffer averaging method provided therein; that 10.6 acres of forest and marshland area will be restricted from use in the areas determined to be the most critical for preservation; that the site's stormwater management will be designed to reduce the volume of runoff directed towards Chief Rd. and River Rd. intersection specifically; that as required by DNREC's Sediment and Stormwater regulation, stormwater management will be designed to address the amount of water flowing from the site, as well as, the quality of the water runoff; that effective stormwater management reduces the amount of runoff, and runoff pollution; that the Applicant takes very seriously the comments made stating that the development will have a discriminatory effect; that to that point, she stated at the Federal and State level, housing discrimination is illegal; that protected classes include race, color, national origin, sex, familial status and disability; that the Applicant had submitted an extensive exhibit booklet, containing Exhibits 1-21, which had been before the Commission for at least 10 days; that Exhibit 1 contains the Area Vicinity

Map; that Exhibit 2 contains all of the PLUS comments; that Exhibit 3 contains a copy of the State Strategies for Policies and Spending Map; that the map shows the project's location to be within Investment Levels 2 and 3; that provided in the PLUS comments, Investment Level 2 areas reflect areas where growth is anticipated by local County and State plans in the near future; that Investment Level 3 reflects areas where growth is anticipated in the longer term or areas that may have environmental or other constraints to development; that Exhibit 4 contains a copy of the Developed and Protected Lands Map; that Exhibit 5 contains a copy of the Sussex County Zoning Map, reflecting the site to be within the MR (Medium Density Residential) and GR (General Residential) zoning districts; that Exhibit 6 contains a copy of the Future Land Use Map reflecting the site to be within the Coastal Area, which is a designated Growth Area; that adjacent and nearby properties are also designated the same, with some properties being zoned for commercial along Rt. 24; that Exhibit 7 contains aerial photographs of the site; that Exhibit 8 contains the Floodplain Map; that the majority of the site is located within Flood Zone X and the balance of the site being located within the AE Flood Zone; that Exhibit 9 contains the Groundwater Recharge Map; that Exhibit 10 contains the Soils Report, prepared by Geo-Technology Associates, Inc.; that Exhibit 11 contains the DNREC Oak Orchard Coastal Drainage Engineering Evaluation; that the evaluation was performed in 2015 by URS Corporation for DNREC's Division of Watershed Stewardship; that the report summarizes the analysis by URS regarding the drainage and flooding concerns in the Oak Orchard community; that the evaluation identified small to medium scale drainage solutions to reduce the frequency and duration of flooding; that drainage efficiencies noted in the report include undersized and non-existent storm drain systems, storm drain systems that require maintenance, and low ground surface elevations; that as the report explains, these deficiencies result in problems such as localized flooding, backwater flooding from the Inland marsh and coastal inundation directly from the Indian River; that the report describes how certain solutions were prioritized over others for implementation; that the report notes some solutions are under the jurisdiction of other agencies, not solely DNREC; that this information is significant to the ability to implement those solutions as they are dependent on the cooperation of other jurisdictions beyond DNREC; that the other agencies include DelDOT or local homeowner associations, as well as, private residents; that the project team studied the report, took the findings and recommendations into consideration when designing the Preliminary Plan, especially in the design of the stormwater management system; that ultimately, Stillwater Harbor will maintain or improve the drainage conditions because the stormwater management system will be designed to reduce the volume of runoff directed towards Chief Rd. and River Rd.; that as required by DNREC's Sediment and Stormwater regulations, the project will have no adverse impact on the western crossing, where there is another low-lying area on the opposite side of that area; that the project team also learned of the implementation of a project near Mercer Avenue, that was spearheaded by Delaware State Representative, Ms. Ruth Briggs King and funded by the State after a prolonged easement acquisition process with private property owners; that the drainage has improved in the subject section, once the solution was implemented; that Exhibit 12 contains stormwater and stormwater drainage area exhibits, which would be addressed by Mr. Jim Erikson; that Exhibit 13 includes the Preliminary Jurisdictional Determination, which would be addressed by Mr. Edward Launay; that Exhibit 14 contains a copy of the Forest Stand Delineation Report, to be addressed by Mr. Launay; that Exhibit 15 contains the Forest Retention and Afforestation Exhibits, to be discussed by Mr. Launay; that the Applicant has proffered the permanent restriction to the use of 10.6 acres +/- of the site, that is to be preserved as marshland and natural forest; that the plan also proposes 1.7 acres of afforestation; that Exhibit 16 contains the buffer averaging exhibit, to be discussed by Mr. Erikson and Mr. Launay; that Exhibit 17 relates to Exhibit 16, containing the analysis by Mr. Launay, regarding buffering of wetland resources and forest retention analysis; that additionally, the analysis states that the project plan is in full compliance with the May 17, 2022, Drainage and Resource Buffer Ordinance when using the buffering averaging method; that the analysis confirms the plan takes into consideration the recommendations

made by Environmental Resources Inc., with respect to the sighting of areas for forest retention, which is proposed to be 10.3 acres (21.2%) of the forest, with a focus on retention in Forest Stand A; that Forest Stand A is an area where overlapping environmental features make the area significantly important with respect to conservation; that Exhibit 18 contains the Environmental Assessment and Public Facilities Report, that is required by §115-194.3 of the Code for any development in the Coastal Area containing 50 or more units; that Exhibit 19 contains a copy of the March 20, 2023, correspondence letter from the Indian River Fire Department; that the letter confirms that their first letter identified two areas of flooding along River Rd. and suggested for an alternate access to be provided; that in early March 2023, the project team met with the fire company to present the alternate access; that subsequently, the March 20, 2023, letter was submitted confirming that the proposed access addressed the fire department's operational concerns during an emergency; that Exhibit 20 contains relevant documents concerning the emergency access to the property; that Exhibit 21 contains a copy of the correspondence letter and exhibit sent to Ms. Ida Wheatley, who is the current property owner of Tax Map Parcel No. 234-34.11-10.00 and 10.01; that the letter explains that DelDOT had requested the developer to consider providing an access and encouraged communication with Ms. Wheatley to discuss the same; that the parcels is located in the MR (Medium-Density Residential) and GR (General Residential) Zoning Districts, which require a minimum lot area of 7,500 sq. ft., a minimum lot width of 75 sq. ft., a front yard setback of 30-ft., a side and rear yard setback of 10-ft. and a maximum building height of 42 ft.; that all proposed structures will comply with the stated requirements; that the plan complies with the purpose of the Municipal Code §115-28, §115-36 and the Comprehensive Plan by proposing a low-density single-family residential development, that protects water resources, watersheds, forest areas and scenic views; that §115-29 for MR (Medium-Density Residential) permits, single-family detached homes located on individual lots, as does §115-37 of the GR (General Residential) Zoning District; that §4.4.2 discusses the structure of the Future Land Use Map and confirms that the County is divided into two planning areas, being designated as Growth Areas and Rural Areas; that the subject parcels are located within the Coastal Area, being designated as a Growth Area, which permits the development of single-family homes, providing for a clustering option, provided that significant permanent open space is preserved and the development is connected to central water and sewer; that Stillwater Harbor proposes 47.2% open space; that the project will be served by central water and sewer services; that the project is located within Investment Levels 2 and 3; that the subdivision complies with the Coastal Area requirements provided in §115-194, where the clustering of single-family detached lots with a minimum lot size of 7,500 sq. ft. is permitted in all residential zoning districts, using central water and sewer systems within the future land use designation; that any development in the Coastal Area, containing 50 or more dwellings is required by Code to submit an Environmental Assessment and Public Facility Assessment Report, which was submitted for the Commission's review; that although the Code does not require a Coastal Area cluster subdivision to meet the superior design requirements, the proposed subdivision did consider those elements; that the proposed plan proposes significant amounts of open space and landscape buffers to protect environmentally sensitive areas on the site, which include tidal and non-tidal wetlands, preservation of marshland, natural forest areas and a stormwater management system that will act as an amenity and companion to the natural features on site; that superior design considerations are further detailed in the paper record and she introduced Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc. to discuss some of the environmental considerations she had briefly discussed.

The Commission found that Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc. (ERI) spoke on behalf of the Application. Mr. Launay stated that he began making the assessment of the environmental features on, what he referred to, as the 53.9 acre portion of the site, in November 2020; that TOPS included the delineation and classification of wetlands and forest areas on

the property, and the determination if any rare, threatened or endangered species or critical habitats were present; that he also performed additional work, providing guidance with respect to the resource buffers and forest retention; that ERI mediated the boundaries of both Federal and State regulated wetlands in accordance with current agency standards and methods; that those boundaries were surveyed; that the boundaries are accurately represented on the project plans; that a Wetland Delineation Plan & Report was submitted to and reviewed by the U.S. Army Corp of Engineers on May 13th, 2022; that a Jurisdictional Determination Approval Letter on June 23rd, 2022, approving those boundaries; that he requested to the submit the approval letter into the record; that there are three acres of federally regulated wetlands on the site; that half of those federally regulated wetlands are forested freshwater wetlands; that there are two and a half acres of Federally and State regulated tidal wetlands on the site; that all of the wetlands border an unnamed stream channel that forms the westerly boundary of the site; that on March 23, 2022, he conducted a consultation with the U.S. Fish and Wildlife Service, regarding potential to any threatened or endangered species or critical habitats that may present on the property; that the U.S. Fish and Wildlife Service's letter of March 23, 2022, indicated that no such species or habitats were present on the site; that the provided letter confirmed his observations and the information he had reviewed in the DNREC Division of Fish & Wildlife comments provided as part of the PLUS process; that in early March 2022, he was contact by Ms. Jordan Brown, DNREC Raptor Biologist with the Division of Fish and Wildlife, regarding a citizen report of the potential presence of a bald eagle's nest on the site; that he had not previously observed any nests on the site; that he subsequently made two additional site visits to observe for any activity or any active eagles nests; that upon those visits he did not find anything; that the Applicant then arranged for the Division of Fish & Wildlife to make a site visit on March 18th, 2022, during which time Ms. Brown and he toured the entire property; that no eagles were observed at that visit as indicated in the department's site visit report, which he provided into the record; that he made another follow up site visit on April 6, 2023, to reconfirm that no eagle activity or nest was located on the property, at which time he found nothing; that to better understand the history of and the current condition of the forest onsite, ERI conducted a delineation of forest types on the property; that currently, there are 48.53 acres of total forest on the site; that of those total acres, 47.5 acres is upland forest; that the 47.5 acres is cited upon well drained, sandy soil types into Fort Mott and Henlopen series, except for forest immediately boarding the wetland area along the western property line; that the soils occupy a well elevated position on the landscape and near above the 100 Year Floodplain, with a depth to seasonal high water that is often in excess of six feet; that such soil types are well suited for development purposes; that currently, Sussex County has no standard protocol for characterizing forest communities; that other than buffering requirements for wetlands and abetting properties, there is no specific bulk standard requirements for retention forest areas; that in 1991, the State of Maryland, enacted a Forest Conservation Act; that in that, the State Department of Forestry prepared a Forest Conservation Tactical Manual; that the manual outlines a procedure for evaluating the types of forest and the quality of the forest; that the manual also outlines procedures for looking at things that would make particular forest priority areas for retention, such as being a wetland buffer, occupying steep slopes, riparian forest located within a floodplain, or consideration to continuous blocks of forest greater than 100 acres; that the forests located on and adjacent to the Stillwater Harbor site are not considered a large forest block of 100 acres or more; that there is a process by which one would consider those conditions and factors, in addition to the age and the structure of the forest, then going through a planning exercise of how the land plan is designed; that this was the applied process for the project; that the Forest Delineation Report, prepared by Environmental Resources, Inc., identified three forest stands, being A, B and C; that these stands were identified based on the age, size, class, and species composition, which is referenced in Exhibit 15; that reflected on the submitted drawing exhibit, there is a heavy dash line, which reflects Forest Stands A, B and C; that the drawing exhibit also reflects the tidal wetland area, where there is a stream channel that forms on the western border of the site; that as part of the

Forest Delineation Report, ERI reviewed aerial photography from 1927 through 2017; that with the exception of an area of forest along the marsh edge on the western side of the site, and an area of long-standing forest on the northeast quadrant of the site, being identified as Forest Stand A, totaling 15.08 acres, the entirety of the Stillwater Harbor property was an active farm with a single home site; that the property was actively tilled until approximately 1992, when farming operations ceased and the buildings were demolished; that remnant debris from the demolition is found throughout the central portion of the site; that the 15.08 acres of Forest Stand A is an oak dominated, hardwood forest with predominantly White and Southern Red Oak; that Stand A has a diverse assemblage of other species, such as American Beach, American Holly, Black Cherry and a variety of hickory trees; that located in low lying portions along the marsh, contain some Pine and Red Maple; that due to the age, size, class and structure, it is rated as having a Good to Priority structure; that the classification is on the borderline between the two categories per the Maryland Technical Manual; that a priority of forest is classified as Excellent structure; that the Excellent structure area is where forest retention efforts should be directed; that within Forest Stand A, there is a 4.2 acre sub-zone, containing forest within the 100 Year Floodplain; that when using the technical standards of the Marine Forest Conservation Manual, the presence of forested wetlands, forested wetland buffer areas, and steep slopes make the particular area the highest priority for retention; that Forest Stand B and C are coniferous forest; that they occupy the former agricultural field portion of the site; that Stand B and C amount to approximately 33.45 acres; that both stands are very similar; that Stand B is different in it has a slightly larger diameter in size class of the Loblolly Pine overstory and a less diverse understory, when compared to Forest Stand C; that the forest has evolved over the past 30 years; that under the Maryland Technical Standards, the forest is rated as having Poor to Good structure, which considers the area to be an earlier mid successional forest; that there is some presence of invasive species in the area occupied by the old homestead; that the invasive species are consistent with demolition debris and past use; that the results of the forest delineation were then used to inform the Stillwater Harbor land planning process with respect to forest retention efforts in the most current plan; that on May 17, 2022, Sussex County enacted an ordinance, known as the Drainage and Resource Buffer Ordinance, which increased protections of water and wetland resources; that the Stillwater Harbor application was submitted prior to the enactment of the Drainage and Resource Buffer Ordinance and the application is exempted from the newly adopted Ordinance provisions; that Stillwater Harbor would only be subject to a 50-ft. buffer from the boundary of the State tidal wetlands; that under those requirements, a very small amount of forest retention would result; that the emerging marsh areas, which are not classified as State wetlands would be included, and the actual amount of retained forest would be very little; that a goal of the currently proposed plan was to ensure that Stillwater Harbor was in full compliance with the newly adopted Drainage and Resource Buffer Ordinance, that requires a 100-ft. buffer from State mapped tidal wetlands and a 30-ft. buffer from all non-tidal wetland on the site; that another goal was to maximize the retention of priority forest, being Forest Stand A, specifically located within the 4.21 acres, containing multiple priority retention features being where steep slopes and floodplains occur; that Solutions IPEM, LLC prepared the Forest Retention and Afforestation Exhibit, which took into account the stated goals; that he reviewed the prepared exhibit; that he was a member of the working group for the Drainage and Resource Buffer Ordinance, which helped Sussex County prepare the Ordinance; that he felt he had good working knowledge as to what the newly adopted Ordinance requires; that the current plan is in full compliance; that allowed under the new Ordinance, there are areas where the buffer can be made larger or smaller in accordance with the buffer averaging provisions of the Ordinance; that a total of 10.3 acres (21.2%) of the existing forest on the site will be retained; that retention is focused on Forest Stand A; that of the 4.21 acre of forest area with overlapping priority retention features, 3.7 acres (87.9%) is retained; that the project also proposes an additional 1.17 acres of afforestation of an existing field area that will provide for a future emergency-only access into the Stillwater Harbor community; that with the afforestation, 12.01 acres (24.7%) of the site will be

retained as forest; that within the Applicant's proposed Conditions of Approval, a Buffer Management Plan, per the current Drainage and Resource Buffer Ordinance is proffered; that in addition, as part of that plan, a 10.6 acre area of land, consisting of marshland and forest located on the western boundary of the site, will be protected in perpetuity, under a Declaration of Restrictions; that the language of the Declaration of Restrictions mirrors past similar conservation instruments that he had previously been involved with and had developed in conjunction with DNREC and the U.S. Army Corp of Engineers; that the 10.6 acres will include all the forest within and beyond the existing wetlands, and the proposed wetland buffers; that the retention area provides a wide buffer for the protection of coastal wetlands and waters that border the site; that the buffer also provides an area for wildlife to utilize and provides the wildlife a corridor to move back and forth adjacent to the existing tidal wetlands located on the site; that he reiterated, Sussex County has no standards for bulk forest retention and in the case of the Stillwater Harbor plan, a significant area of forest is being provided, with conservation effort being directed toward the forest with the highest value on the property with respect to the quality and its ability to buffer and protect the waters of the Inland Bays.

The Commission found that Mr. Jim Erikson, Professional Civil Engineer with Solutions IPeM, LLC spoke on behalf of the Application regarding the proposed stormwater management. Mr. Erikson stated that Stillwater Harbor is located on River Rd. in the Oak Orchard area; that a large portion of Oak Orchard is located within the floodplain, where many residential developments exist in the vicinity of the Stillwater Harbor project; that much of the existing, undeveloped land in the area is located outside of the floodplain and would include the majority of the Stillwater Harbor site; that the site's stormwater management considered the significant amount of developed land in the floodplain and the known drainage concerns in the area; that submitted in the exhibit book, is a color topographic map of the area; that on the map the yellow and greenish areas represent lands with higher elevation; that the purple and bluish areas represent land with lower elevation; that the Stillwater Harbor site is located within the yellow and greenish areas, therefore representing an area of higher elevation, the site has a well-defined channel, located on the western boundary of the parcel, which is a natural on site drainage feature that was taken into consideration when designing the stormwater management and maintenance; that along the southeast property line of the site, there is another existing channel, that is not well defined; that both channels ultimately cross River Rd. and discharge into the Indian River Bay; that to the east, the channel crosses River Rd. in the vicinity of the intersection with Chief Rd.; that to the west, the channel crosses River Rd. at approximately 475 ft. west of the proposed entrance to Stillwater Harbor; that both channel crossing areas are known to flood River Rd., causing road closures by DeIDOT; that these issues are current drainage challenges; that DNREC is aware of the issue; that DNREC identified and discussed both areas in the Oak Orchard Coastal Drainage Engineering Evaluation performed in 2015, which can be referenced under Exhibit 11; that the evaluation identified drainage concerns within the Oak Orchard area and provided some conceptual remediation measures; that DNREC has implemented some of the work identified in the report; that he spoke with a DNREC representative, who informed him that DNREC had requested funding for some of the larger projects that were identified in the drainage evaluation; that as provided in DNREC's report, project priority is dependent upon availability of funding and other considerations, such as property owner cooperation to grant easements required to implement drainage solutions; that the challenge with implementation is not only funding dependent, but the report also noted the fact that drainage solutions are sometimes under the jurisdiction of other agencies other than DNREC, such as DeIDOT; that implementation, as noted in the report, is also dependent on the cooperation with homeowner associations and individual property owners; that within the exhibit, it shows the approximate location of the conceptual improvements in the area west of Stillwater Harbor; that the improvements were identified in the DNREC evaluation as a top priority project; that the project includes the addition of three pipes with tide gates, the replacement of the

existing pipe, the addition and replacement of bulkheads and raising the road in the vicinity; that nothing has been finalized in respect to funding or priority for the project; that part of the final decision will be influenced by the by the availability of easements from private property owners; that there is significant work needing to be performed on private property in order to build the project; that if the property owners within the vicinity of the improvements would reach out to DNREC to confirm their willingness to work with them on easements, it could very well improve the odds of funding the drainage improvements in the subject location sooner, rather than later; that this is an action property owners can take, which will benefit everyone in the area, regardless of the status of the Stillwater Harbor application; that the exhibit identifies the approximate limits of the conceptual improvements at River Rd. and Chief Rd.; that similar to the other DNREC project, the associated improvements would require easements from private property owners; that these improvements propose similar measures as the other channel crossing location, with raising of the road, the addition or replacement of pipes with tide gates; that this project also proposes re-grading the boat ramp area, which is located on private property and floods during high tides; that he noted, that the DNREC evaluation did not prepare a concept of those proposed project improvements; that the provided visual was prepared by Solutions based on the written summary; that similar to the western channel crossing area, private property owners may be able to improve the timing and implementation of the project by cooperating with DNREC and any other necessary agencies required in order to make the improvements that address the current drainage deficiencies and challenges; that without the granted easements, DNREC cannot perform the work on private property; that both channel locations face similar drainage concerns; that there are two primary factors that contribute to the drainage condition of each area; that one factor is areas of upstream watershed runoff; that areas located upstream of River Rd. crossing shed water during storm events; that water runs down to the lowest points, being the location of the road crossing in the current scenario; that the water builds up and eventually passes through piping, or in extreme events will crust over the road; that two primary factors contribute to the drainage condition in each of these areas; that the first is upstream watershed runoff; that the second factor concerns various types of coastal flooding; that people do not always picture pipes as a two-way door, but when downstream water is higher than upstream water, the pipes will flow backwards until the water elevation normalizes; that when the tides are high enough where they are stacked tides due to offshore winds, the Bay rises and occasionally will crest over the road; that this is an event seen in many areas and coastal communities in Sussex County; that this event also occurs at the channel crossing location located at River Rd. and Chief Rd.; that the two mentioned factors also create cumulative and compounding effects, especially when high tides are present during a large storm; that when this occurs, it is possible to have water from the tides take up some of the upstream storage potential, increasing the likelihood of flooding from upstream watershed runoff; that he anticipated a question the Commission might have is to the frequency of flooding and flooding events on River Rd.; that unfortunately, there is not empirical data to confirm the frequency of floods in the area; that because of the lack of empirical data, the team communicated with DNREC, DeIDOT and the local fire department to learn more about the frequency of flooding; that the team also reviewed letters submitted to the Commission, as well as the previously mentioned DNREC report; that generally speaking, the team learned that the intersection of Chief Rd. and River Rd. floods approximately four to eight times per year; that the flooding is primarily driven by coastal flooding; that the western crossing floods approximately two to five times per year; that the team also studied information regarding DeIDOT's monitoring of the bay elevation in the subject vicinity, which appears to generally confirm the flooding estimates provided; that in conversations with the local fire department, it was encouraged the team seek an alternate emergency access for the community; that with the understanding that River Rd. is sometimes closed by DeIDOT during the flooding events; that they met the fire department's request by providing alternate emergency access as previously discussed by Ms. Peet; that at the intersection of River Rd. and Chief Rd., the upstream drainage area is approximately .12 to .13 mile, which is

approximately 83 acres; that the visual exhibit reflects the approximate drainage area, being a delineation very similar to that identified in DNREC's evaluation; that much of the drainage areas are comprised of agricultural fields along Chief Rd.; that the Stillwater Harbor project currently makes up about 36% of the drainage area, that drains to the intersection of Chief Rd. and River Rd.; that there is also a shallow channel for discharge on the eastern boundary of the site; that considering the projects presence in the drainage area and the shallowness of the eastern boundary channel, the proposed stormwater management design limits the discharge to the eastern boundary site; that the rear of the lots, along the eastern boundary of will all have swales that will convey the runoff from the areas located within the Limits of Disturbances to the internal ponds; that overall, the net drainage area towards the Chief Rd. and River Rd. intersection will go from approximately 83 acres of drainage area, to approximately 54.25 acres of drainage area; that this will decrease the rate of the 100 Year Storm Drain to the intersection by about 21%; that the predevelopment runoff volume for the 100 Year Storm from the site is approximately 80,000 cubic feet; that the proposed design anticipates that post development runoff volume from the site will decrease to approximately 4,000 cubic feet; that this equals a reduction of 95% from the current conditions; that where Stillwater Harbor makes up a large percentage of the drainage area, it is anticipated that the implementation of the stormwater management plan will result in relatively immediate and significant improvements in the upstream contribution; that it will lower the 10 and 100 Year Flood elevations by reducing one of the factors being upstream watershed runoff; that for the western area of the site, the overall drainage area is approximately 1.52 to 1.53 miles or approximately 980 acres; that this coincides with the drainage area identified with the DNREC evaluation; that previously stated, the intersection floods less frequently than the Chief Rd. intersection; that DNREC has identified this crossing as a higher priority project in their evaluation; that Stillwater Harbor proposed limited disturbance draining to that crossing; that the drainage is anticipated to be about 4.5% of the overall drainage area; that because it is a much smaller percentage in comparison to the drainage just described, the overall drainage impacts of Stillwater Harbor on this locations drainage conditions are limited as a relatively small contributory drainage area located at the bottom of the watershed; that the site will be designed in accordance with the DNREC's Sediment and Stormwater regulations, by accounting for stormwater management, maintenance and treatment of water runoff for the benefit of water quality before the final discharge point into the Bay; that Stillwater Harbor will not impact the anticipated elevations of the channel during neither the 10 nor 100 Year Storm Events; that there are numerous ways to approach the analysis, given the complexities with tidal influences and other considerations; that in all scenarios investigated, the anticipated water elevation within the western channel remains the same in the existing and post development conditions in a 10 or 100 Year Storm Event; that in addition to the water quality measure, the stormwater plan will comply with DNREC regulations for water quality, which will include any pollution control strategies, including any relevant total maximum daily load or TMDL requirements; that 2021 State of Inland Bays Report does identify the Inland Bays as receiving a Fair rating; that he noted, the primary source of pollution for the Inland Bays are agricultural uses; that agricultural uses produce the most amount of nitrogen pollution per acre and affects 75% of the pollution reductions needed to meet TMDL requirements are from agricultural land uses; that Stillwater Harbor will meet or exceed DNREC's Sediment and Stormwater regulations; that the plan also provides voluntary buffers from wetlands far exceeding the minimum requirements at the time of the application's submittal; that the plan provides voluntary tree retention and a voluntary area of afforestation; that as a result, the Stillwater Harbor project is minimizing pollution contributions to the Inland Bays; that Stillwater Harbor will maintain or improve drainage conditions for both channel crossing areas, as described during his presentation; that because the stormwater management plan has been designed to reduce the volume of runoff directed towards the Chief Rd. and River Rd. intersection; that it will have no adverse impact on the western crossing as required by DNREC's Sediment and

Stormwater regulations and additionally the site will provide water quality, in a manner that meets or exceeds the DNREC Sediment and Stormwater regulations.

The Commission found that Mr. Greg Sauter, P.E. with Geo-Technology Associates, Inc. spoke on behalf of the Application. Mr. Sauter stated the main concerns seemed to be relevant to flooding; that he had a personal experience with a flooding event that resulted in the loss of his ancestral home; that due to this, he had made a personal commitment and had natural tendency to help communities that experience flooding; that the flood conditions experienced by the community of Oak Orchard area is a regional issue; that the flooding issue is not going to disappear if the Stillwater Harbor community is not built; that he considered what could be done to improve the current flooding conditions; that currently, residents are experiencing periodic flooding, whether it is king tides or nor'easters, the coastal influence of flooding is really what contributes significantly; that in addition to the rainfall precipitation stormwater management, the site will have four ponds that will not only control the water runoff from the development of the community itself, but it will also help regulate a significant portion of the runoff from the east; that the site receives a significant amount of rainfall from the east; that with proposed sewer and water management basins, it will regulate a significant portion of runoff; that ultimately in doing so, it will help the drainage and flooding conditions at Chiefs Rd.; that the stormwater management will be designed to DNREC and Sussex Conservation District's regulations; that the stormwater management will impact the timing of the runoff from the site; that by doing so, it will help mitigate and manage timing issues with the flooding events; that when considering the western drainage area, Stillwater Harbor contributes a minimal amount to the existing drainage; that per DNREC's regulations, there will be no adverse impact on the flooding; that flooding will still occur on the road, but Stillwater Harbor should not impact the flooding; that a benefit the developers would provide the community would be relief to flooding conditions and lessen the impact the flooding creates on the current residents lives; that another important benefit is regarding emergency services; that there will be an emergency access way for occasions when there is flooding, particularly across the portion west of the site, along River Rd.; that the fire department emergency personnel will be able to have an alternate way of going through the site to access people with emergencies; that he had a lot of communication with DNREC and had worked with DNREC to resolve issues on a number of projects; that DNREC is very responsive to the needs of the communities within Sussex County; that Ms. Jessica Watson, Program Manager with Sussex Conservation District is also very responsive; that DNREC and Sussex Conservation District are both concerned with mitigating potential impacts; that the DNREC report referenced the need for easements of private property; that if the residents would be willing to work with DNREC and DeIDOT, there are various ways to minimize disturbance to the residential properties; that examples would be horizontal directional drilling, where pipes can be installed below the ground surface, as to not destroy driveways and properties; that another option would be to install a trench; that DeIDOT can also provide mitigation to flooding conditions, as they previously had with the breach at Indian River Inlet after the bridge was constructed; that we live in a coastal environment and will never get rid of the flooding; that we do need to attempt to mitigate the flooding; that in his opinion, the proposed project, as well as implementation of the proposed DNREC solutions will help to improve the quality of life for the existing and future residents of Oak Orchard; that by developing 100 or more houses within Oak Orchard, it will allow Oak Orchard to obtain over 100 more voices to contact DNREC and DeIDOT to request assistance to mitigate the flooding issues.

The Commission found that Ms. Betty Tustin, Senior Project Manager with the Traffic Group, Inc., spoke on behalf of the Application in relation to traffic. Ms. Tustin stated she is a professionally licensed civil engineer; that no Traffic Impact Study (TIS) was required for the development, as it fell into the little window of the DeIDOT Development Coordination manual that states, that if a project is

anticipated to generate less than 200 vehicle trips per day and less than 200 vehicle trips during a peak hour, the developer in lieu of performing a TIS, may make a contribution to an Area Wide Study fee; that the project's contribution fee is calculated to be \$12,580.00; that DelDOT had also required the Developer to enter into a Traffic Signal Agreement for Rt.24 and Gull Point Rd.; that when a traffic signal is deemed to be warranted, whatever parties have entered into a traffic signal agreement with DelDOT, will be required to design and construct that signal; that DelDOT has required the developer to contribute to the Hazardous Elimination Program at the intersection of Rt. 24, Mount Joy Rd. and Oak Orchard Rd.; that the developer is currently working with DelDOT to calculate what that contribution will be; that River Rd. and the area of the site's access is approximately 24 ft. to 26 ft. wide, with 12-ft lanes; that there are grass shoulders along River Rd. in part; that the developer will comply to the requirement to improve the site frontage to DelDOT standards; that the DelDOT standards for local roads are 11 ft. lanes with five foot shoulders; that she understood safety was a concern; that the team requested three years of crash data from DelDOT; that three years is how far back DelDOT typically considers; that she provided the crash data exhibit into the record; that DelDOT provided crash data from a mile plus 0.42 to 2.34 miles from the intersection of Downs Landing Rd. over to Oak Orchard Rd.; that in the past three years, there have been four crashes; that one crash took place along Chief Rd.; that the other three crashes took place along Oak Orchard and River Rd.; that two crashed occurred in 2022; that the other two crashes occurred in 2020; that DelDOT typically only looks back three years, due to changes made over the course of time; that the traffic volume projected to be generated by the development is 1,258 vehicle trips; that the traffic volume projects 629 vehicles going in the site access and 629 vehicles going out the site access in a day; that not all vehicles go in the same direction when exiting the site; that they estimated 371 cars per day (59%) will head east and 258 cars per day (41%) will head west; that currently the ADT (Average Daily Traffic) on River Rd. is 742; that if one were to consider 371 vehicles heading east, to be divided evenly for a 24 hr. period, it equals to one vehicle heading in each direction every four minutes; that she did understand that traffic does not flow as evenly as she proposed; that for traffic analysis, they look at a peak hour; that a peak hour is the one hour of the day where all the traffic is concentrated; that for the project site, the peak hour is 46 vehicle trips in the evening peak hour coming from the east, heading into the site and 41 vehicle trips heading out of the site, in the other direction; that the analysis equals one vehicle, in each direction, for each 80 seconds within the peak hour; that for example, the traffic signal at the intersection of Rt. 113 and Rt. 20 in Millsboro has a cycle length of approximately 150 seconds, which means that when the signal for Rt. 113 turns green, it will stay green for 75 seconds and will stay red for 75 seconds, which equals 150 seconds; that when referencing a 160-second cycle, the light would stay red for 80 seconds, and would stay green for 80 seconds; that she requested the Commission imagine the amount of time spent at that traffic signal in relation to the proposed traffic volume; that the project traffic volume would compare to one vehicle traveling from the east and one vehicle traveling from the west every 80 seconds; that for a two-lane roadway, there are many different factors used in the engineering world to determine what volume of traffic the road can handle for a good level of service; that these factors depend on the road curvature, the grade, the number of driveways, as well as many other factors; that generally, a two-lane roadway can carry about 4,400 vehicles per day and the project anticipates traffic well below 4,400 trips per day.

Ms. Stevenson questioned the size of the road frontage.

Mr. Robertson questioned what the proposed road frontage was based on the Preliminary Site Plan.

Ms. Tustin stated the road frontage will be determined through the Site Plan Review process upon plan submittal and she did state the proposed linear footage but provided a visual estimate on an aerial image exhibit for the Commission.

Ms. Peet stated that the proposed development complies with the §99-9C requirements; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape as shown and described; that the Applicant proposes a significant amount of open space, totaling 47.2% of the site; that the project provides a 50-ft. setback to adjacent agricultural uses; that the plan provides a 30-ft. landscape buffer to all agricultural uses and a minimum of a 20-ft. buffer from adjacent residential uses; that there are 5.4 acres of wetlands on the site; that voluntary buffers are provided in compliance with the newly adopted buffer ordinance; that the project is located within Flood Zone X; that a small portion of the site is located within Flood Zone AE; that all lots are located above base flood elevations; that there are no known sites that require historic preservation on the site; that the Applicant is proposing the installation of a historic marker to recognize the history of the area, which is memorialized in the proposed Conditions of Approval submitted into the record; that there was a comment submitted that mentioned a burial ground of ancestors near or on the site; that from the research the team performed, it is believed that the mentioned location is located across Chief Rd., on another owner's property; that the plan preserves large tracts of open space and scenic views; that a minimization of tree vegetation, soil removal and grade changes are proposed; that screening of objectionable features from neighboring properties and roadways will be provided by the buffers, with some buffers being in excess of the Code requirements; that the addition of the afforestation area will also provide privacy for residents living on the backside of the development; that water is anticipated to be provided by Tidewater Utilities; that wastewater is anticipated to be provided by Sussex County; that agreements will be made with a commercial trash hauler to provide for trash collection; that Mr. Erikson and Mr. Sauter previously discussed stormwater management; that stormwater management will be designed in accordance with the applicable standards; that the proposed development is planned in a way to minimize erosion, sedimentation, change in groundwater level, increased rates of runoff, potential for flooding and designed so that drainage of the groundwater recharge is maximized; that the plan accounts for safe vehicular and pedestrian movement within the site and to adjacent ways; that the entrance to the community will be designed per DelDOT's standards; that all roadways will be designed in accordance with the with Sussex County standards; that five foot sidewalks are proposed in the community, along with an anticipated trail; that the site also provides emergency access to provide safe emergency access and other connectivity; that it is anticipated that the proposed community will cause current property values to remain the same, if not increase the values of other properties in the area; that the propose subdivision will not have an adverse impact on farmland; that preservation and buffer considerations have been implemented and incorporated into the plan; that a series of discussions were held with DelDOT officials concerning roadway improvements, as previously discussed; that the project is compatible with other nearby land uses, therefore the project is compatible with in design, density and style of the surrounding area; that as previously explained, there will be an efficient stormwater management system, that acts as an amenity; that the runoff will be treated for water quality and quantity prior to discharge; that the plan is consistent with the Sussex County Comprehensive Code for the reasons stated in the presentation and provided in the Applicant's submission; that she requested to conclude her presentation by addressing, what she considered to be well settled law on subdivisions in Delaware; that the Delaware Supreme Court case of Tony Ashburn & Son, Inc. versus Kent County Regional Planning Commission, reaffirmed the laws that apply to subdivision that had been settled in earlier cases; that she believed the Commission, as well as Mr. Robertson were familiar with the quote, which she read into the record; that "when people own land for a specific use, they are entitled to rely on the fact that they can implement that use, provided the project complies with all specific criteria found

in the Ordinances and subject to all reasonable conditions which the Planning Commission may impose in order to minimize adverse impact on nearby landowners and residents”; that “to hold otherwise, would subject the purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the Ordinances”; that “the result would be the imposition of uncertainty on all landowners, respecting whether they can safely rely on the permitted uses conferred on their land under the Zoning Ordinances”; that in early case law, specifically East Lake Partners, the Delaware Superior Court held that while the desires of the public and respect to uses are pertinent to the zoning of land, when the initial uses for land are established, such evidence is pertinent to site plan review, except insofar as it is limited to proposed conditions and safeguards to be imposed upon the plan itself; that the Planning Commission has no power to reject a site plan because these residents do not want the land use for a project that is a permitted use under the applicable zoning district; that in that case, the Superior Court also explained the following quote, “the Planning Commission may not reject a site plan for permitted use on the grounds of the project will eventually affect the general neighborhood”; that in summary, if a subdivision complies, it should be approved; that however the cases also state that the Commission has the ability to impose reasonable conditions if those conditions are based on factors contained in the record; that she stated the project complies with the Zoning and Subdivision requirements of the Code; that the project is consistent with the Comprehensive Plan; that the Applicant requests the Commission’s approval of the Stillwater Harbor subdivision, subject to the Conditions of Approval submitted into the record; that the team is available for questions; that she stated she would appreciate the opportunity to speak for a few minutes at the conclusion, to provide answers to any questions or new statements that the team may have never heard; that there is a lot of interest in the Application; that she would like the ability to address anything the public would like to ask, to allow open issues to be addressed on the record to the fullest extent possible, before the record is closed; that if her request is not applicable, she understood and she thanked the Commission for the consideration.

Ms. Stevenson questioned at what location would the road be raised, how much of the road is proposed to be raised, what the intention was for the boat ramp area, what the current water table of the site, why the entrance was not initially proposed from Jackson Draine Lane to avoid the flood issues and the current road conditions of Jackson Draine Lane.

Mr. Erikson stated the developer will not be raising the road; that the raising of the road was mentioned as one of the remediation methods mentioned in the DNREC evaluation, where DNREC recommended to raise the road in several locations where the road is low and floods; that with the boat ramp area, he was presenting a concept plan recommended by DNREC in their report of identified remediations; that he mentioned these concepts in an attempt to show what the DNREC remediations intentions would be for the future; that he wanted to point out that without granting proper easements, DNREC cannot utilize those remediations; that the project will drain to the mentioned areas; that the plan shows no adverse impact and potential improvement to those areas; that they wanted to show the DNREC remediation plan and how it will require cooperation from everyone in the vicinity and the seasonal high water table is around elevation five.

Ms. Peet stated the primary reason the entrance was not proposed from Jackson Draine Lane is there are private property owners that live off the road; that the team was attempting to reduce the number of vehicle trips through that specific area; that within initial correspondence with DeIDOT, the main entrance was proposed off River Rd.; that the addition of the emergency access was for the limited purpose of providing emergency access to the site, while also being respectful to the people who have lived in the area for a very long time; that having the daily traffic, as Ms. Tustin described, entering and

exiting the site, was not part of the consideration and design; that due to this, they have proposed the emergency access, which addresses the concern raised regarding the drainage and the impassibility of the road when road closures occur; that there is a 50 ft. easement of record for Jackson Draine Lane, which was included within the exhibit book; that currently the road is a 12 ft. wide, unimproved road; that she acknowledged the understandable need to address some maintenance considerations with the adjacent property owners who also benefit from the easement and that the Applicant is willing to do so.

Ms. Wingate stated the easement consisted of 45 feet for emergency access per the documents.

Ms. Peet stated the 50 ft. easement refers to the existing easement of Jackson Draine Lane that crosses the proposed site, providing access to Oak Orchard Rd; that presently the road is not improved and by purchasing the back property, it provided the permission to use the easement.

Ms. Stevenson questioned what investigation was performed to ensure that there was no historical significance of the site.

Ms. Peet stated the team had engaged Mr. Edward Otter, Archaeologist; that Mr. Otter performed an initial assessment, and the assessment confirmed the same information that the PLUS comments had provided.

Chairman Wheatley advised the Commission and the members of the public that in the efforts to provide intergovernmental coordination DelDOT had provided Mr. Todd Sammons, an expert with the agency, to provide information regarding traffic issues and he explained DelDOT had provided Mr. Sammons to assist the Commission understand the traffic nuances and traffic impacts.

The Commission found that Mr. Todd Sammons, Assistant Director with the Development Coordination Department of DelDOT's Division of Planning spoke per the request of the Commission. Mr. Sammons advised the Commission that there are many facets and experts within DelDOT; that he may not be able to answer every question; that he explained that his department within DelDOT processes land use approvals that come through the counties and municipalities, which is the reasoning the department is called Development Coordination.

Ms. Stevenson questioned why a Traffic Impact Study (TIS) was not performed, as Ms. Tustin stated the traffic would be a good 500 vehicle trips per day, she questioned if the developer will be responsible for the 200 ft. frontage of their property and questioned if there was any information relating to road damage due to the flooding issues.

Mr. Sammons stated DelDOT has certain warrants that must be met for analysis to occur; that they look at a lot of factors on whether a traffic analysis is needed or not; that he requested to provide a caveat to the public, as it is relative; that if someone is used to living on a road with one car per day, then suddenly seeing two to three cars per day, it would seem to be a huge increase and change; that his intention was not to undermine the fact that there is going to be a lot more traffic; that when prospectively speaking of what a local road can handle, he felt Ms. Tustin and the developer's engineer did a good job providing explanation of how they look at the local and two lane roads, and what those roads can handle; that local roads are able to handle around 4,400 average daily trips; that with the current 742 vehicle trips, with the addition of approximately 1,200 vehicles trips for the development, it would not meet the warranted threshold; that the current road should be adequate from a capacity standpoint to manage and mitigate the traffic; that he does understand that there are other factors regarding traffic; that DelDOT can look

at analysis, where they determine if there are potential safety and operational concerns, if the local land use agency deems it necessary; that based on the capacity, DelDOT would not require a traffic analysis; that DelDOT did pull additional information, which was covered within Ms. Tustin's presentation with regards to the things required to help mitigate other DelDOT projects; that although the developer is not doing an intense, detailed analysis, such as a Traffic Impact Study or Traffic Operational Analysis, there is traffic analysis performed through the subdivision's Entrance Plan Review process; that the review will analyze the need for turn lanes into the site, what the turn lanes should be, analysis of the roadway frontage; that DelDOT requires projected frontage; that for the proposed project the projected frontage will be approximately 800 ft. or more; that DelDOT takes into account other factors such as the community, the current citizens, the amount of right away, the drainage, as well as others; that he cannot confirm that the project will provide exactly 800 ft. of road improvement; that 800 ft. is the requirement they will start with; that should the project be approved, they will begin working with the developer in attempts to accomplish the 800 ft, and will back down from there if required; that Ms. Tustin touched on the requirement of 11 ft. travel lanes and five foot shoulders in the area, as well as drainage improvements; that there will be a lot of mitigating efforts performed along the subject area; that the project is in the infancy of going through DelDOT's review and planning approval process; that the project had not yet made a formal submission for the design of the entrance and roadway improvements; that once the project makes a formal submission, all facets within DelDOT, and at times, maybe other agencies will have a change to comment on the proposed design; that the Applicant had a pre-submittal project coordination meeting, where the Applicant provided what would be proposed and they provided some idea of what to expect going through the process; that DelDOT has not yet received or reviewed formally submitted design plans; that once a formal submission has been made, DelDOT will review the roadway width and the drainage; that they did reach out to Mr. Tyler Brown, DNREC Public Drainage Environmental Program Manager II, prior to the meeting, as well as Sussex Conservation District to better prepare based on the comments made from the public, legislators and staff; that DNREC and Sussex Conservation District recommended the public or the Commission contact the offices if there were questions or concerns; that DNREC had stated they are working on several drainage issues in the Oak Orchard Areas; that they could provide technical assistance and answer questions regarding flood mitigations; that any drainage concerns should be addressed with Sussex Conservation District; that DelDOT takes care of the infrastructure and roadways they maintain; that DelDOT will be commenting on the design once it is proposed to them; that DelDOT is very conscientious of coastal sea rise; that due to this, DelDOT has created a Transportation Resiliency and Sustainability group; that DelDOT has district staff, who are the feet on the ground, and close the roads when there is flooding and there will be a lot of aspects and facets considered once the design process starts.

Ms. Stevenson stated her main concern is the safety of existing residents, and the people who are moving to the area; that hurricane season is the time of year when everyone seems to be here; that getting people in and out on a road, where it already floods and there is an additional six inches of rain is a worry for her and she questioned if DelDOT would have any requirements for how the emergency access road would need to be built.

Mr. Sammons stated the flooding is a concern; that through submitted correspondence and questions, it can be seen that the fire department raised the same concern, as well as their DelDOT District; that the DelDOT District has not reviewed the design or the site; that the DelDOT District has only looked at the conceptual plans; that DelDOT was in concert with the fire department's concerns; that the developer took the initiative to provide the emergency access located toward the back of the property, closer to Rt. 24; that from an access perspective, DelDOT wants to manage and mitigate access; that they do not want a lot of access points; that he would anticipate no issues with DelDOT supporting the proposed access,

as it would allow for the access of emergency vehicles and to help transport people out; that DelDOT only has authority over the State maintained roads; that DelDOT could make a recommendation, but it would fall under the purview of Sussex County with regards to private roads; that DelDOT would have regulation over the access and would be in support, and if the Commission were to ask DelDOT for recommendations on the private road, they would provide it, however, they otherwise try to stay in their own lane.

Ms. Wingate requested Mr. Sammons' opinion on if the emergency access would be better suited as the regular access, and she questioned if Mr. Sammons supported the DelDOT comments provided in the PLUS review regarding looping some of the roadways, by eliminating some of the lots to join the roads together in the area where there are cul-de-sacs, to allow for a more continuous flow throughout the community.

Mr. Sammons stated he was not at liberty to say; that DelDOT would consider it upon receiving relevant information to make an educated consideration; that he would be premature in providing comment as he did not know all of the factors; that it seemed there were a lot of potential impacts and concerns with the emergency access; that with the road being private, it would fall under Sussex County; that as far as the entrance, the design plans had not been presented to DelDOT; that assuming there were no adverse factors with having an access there versus River Rd., he would predict the department would not have a problem with it; that there are many factors that come into the determination of where access points are located; that he did not have the information, nor had DelDOT reviewed the design and if it were proposed, DelDOT would consider it and he requested to refrain from providing comments on the looping of the internal roads, as they would be considered private, non-State maintained roads within the subdivision.

Mr. Mears questioned if Mr. Sammons knew if the impact or propose improvements along River Rd. would cost any of the existing residents their front property for the purpose of road widening.

Mr. Sammons stated DelDOT had not currently reviewed the design; that the developer or engineer would visit the site, survey the right of way and would propose what could fit in the right of way; that from DelDOT's standards, they would like to see 11 ft. travel lanes to five-foot shoulders and drainage improvements; that it comes down to what is currently there and what can fit there; that DelDOT is left with the task of ensuring the existing and future citizens and traveling public are protected, as well as, what designs can work at the site; that until DelDOT is able to review the design, he cannot say for certain; that DelDOT would try to achieve the maximum improvement without adversely impacting the residents; that it would be up to the developer to obtain any additional right of way or easement; that typically there is enough right of way on these sections of road to fit these types of improvements, because typically over the years the right and easements have been gained, however it is not always the case, leaving DelDOT to balance out trying to fit the improvements in the existing area; that at times the improvements get necked down, also known as a road diet, in certain areas because of existing obstacles, but DelDOT would notify the developer of what they would like to see designed and go from there; that DelDOT would be happy to comment on subdivision designs; and DelDOT has standards set forth in the Development Coordination Manual, for State maintained roads, which he was happy to share with staff or the Commission.

Mr. Erikson stated any easements for the right of way required for the widening of the road would have to be purchased from the property owners; that the process would be completely elective; that they have not fully drawn out the design, as it is still in a preliminary state; that they will do their best to fit the

improvements in the right of way; that if they need to approach people for easements, people will be able to respond how they like and if they need to, they will return to DeIDOT to design a creative solution to maintain a safe entrance.

Ms. Wingate questioned the width of the existing roadway and the existing right of way.

Mr. Erikson stated the existing road width in front of the site is 24 ft. to 26 ft. wide; that the existing right of way varies from 42 ft to 46 ft; that typically, right of ways are a standard 50 ft.

Mr. Mears questioned how the emergency entrance would impact the private property owners and what measures would be taken to designate the entrance for emergency purposes only.

Mr. Erikson stated there would be a gate placed at the emergency entrance; that the gate would be located on the community's side; that the location of the gate was intentional, per recommendations and coordination from DeIDOT to ensure they were agreeable with it; that the gate would be locked; that the gate would have a knock box to allow for access by the fire department and emergency services and they anticipated the President of the homeowners association would have an additional key.

Ms. Peet that there is an easement plan recorded of record, which benefits several properties off the easement; that the easement crosses the site; that she believed the existing adjacent property owner, Mr. Jan Harmon, as well as another property owner, may be impacted by the easement; that the concern is, if the main entrance would be located there, the traffic would be coming from Oak Orchard Rd. through the area, via the easement, disturbing the adjacent neighbors; that they understand the preliminary traffic volumes, and was the reason the easement was considered not to be a primary entrance; that the easement was not part of the original plan; that the easement for emergency access was taken into consideration as a result of the letter submitted by the fire company; that the team met with the fire company multiple times; that it was suggested that emergency access be placed on the opposite side of the site for when emergencies occur; that otherwise, the main entrance would be utilized; that the main purpose of acquiring the rear property was to address the emergency access issues, specifically when the road is impassable during flooding on River Rd; that there is an easement proposed on Parcel 6.01, which they own; that there is also an easement of record that crosses the site, benefitting adjacent properties for ingress and egress onto Oak Orchard Rd and the easement record was submitted within Exhibit 20.

The Commission found that there was no-one present who spoke in favor of the application and there were 19 people who spoke in opposition to the application.

Daryl Jackson stated that he is representing the people who live along Jackson Draine Lane. Mr. Jackson stated that he had concerns about the emergency entrance proposed to be placed on Jackson Draine Lane; that Jackson Draine Lane is a dirt and gravel entrance to some single-family lots and it is not suitable as an emergency entrance for a development; that the lane does not allow for two-way traffic and would impede on the ability to leave or enter their residence; that it would hinder agricultural equipment entering or leaving the properties; that although there is a 50 ft. easement, the intent was for a few houses and not hundreds of houses; that if the easement was built out to the 50 ft. it would encroach on the wetlands; that the location of the emergency entrance would allow for Stillwater residents to trespass onto Jackson Draine Lane properties; that as a resident he is against any alteration of Jackson Draine Lane including pavement, gates, and widening of the lane; that the lane is not state maintained and is maintained by the current residents for access to their properties; that any

access would have to be approved by the majority of residents on Jackson Draine Lane; and that there are eagles in the woods.

Robert Draine gave some history of the area. Mr. Draine stated that when the easement was established it was to give access to one property, not for an entire development; that most of the proposed access would be through his property; that the developer offered to pay for access and that he refused; that the history of the American Indigenous people is being decimated; that the Commission must take into consideration the four developments within a two-mile radius and not just Stillwater Harbor; and that he is adamantly opposed to this development.

Mr. Charles Clark, IV (aka Little Owl) spoke in opposition to the Application. Mr. Clark stated he presented before the Commission to oppose Stillwater Harbor, and to speak for anything on two legs, four legs, that crawls or creeps, for himself and everything he represented; that he presented before the Commission wearing his father's war headdress; that what he speaks is the truth; that he had prayed to his Creator for four days about the Application; that he recited a prayer in his native language, invoking the words of his people, to bring his Creator in the room; that he wished to clear up the nonsense he had heard; that the lawyer stated they did not know there was a burial ground a stone's throw away from Stillwater Harbor; that he questioned what else did the developer not know; that he questioned if the developer knew there was another burial ground located on the northwest corner of the site; that Chief Rd. was given its name because the Nanticoke Indians came from the area; that Chief Rd. was originally his grandfather's road; that unfortunately, his grandfather previously turned Chief Rd. over to the State; that he will not allow his ancestral lands, which his family built, to be misperceived, misconstrued and twisted by out-of-state people who do not know what they are talking about; that to say Riverdale Park is a mobile home park, containing 400 mobile homes, shows how little research was performed; that he is Little Owl; that he is the son of Chief Red Deer; that he is the grandson of Chief Little Owl; that he is the great-grandson of Chief Wynecaco; that he is the great, great grandson of James Clark; that his great, great, great grandmother, who's name stands for "She who bows her head in prayer", is buried in the ground in an area the developer does not know about; that his grandmother was seven years old when the Revolutionary War broke out; that she was 19 years old when Delaware became a state; that his grandmother died in 1956 and was buried in the lands that they can see, from where she rests to where the developer wants to rape and destroy the land; that buried around his grandmother, is his mother, who he lost in December 2020 due to the COVID pandemic; that buried next to his mother is his father, who he lost in October 2015; that buried next to his father is his grandfather, Charles Cullen Clark, IV, Sr., also known as Chief Little Owl, but the developers do not know this; that he will not have Riverdale Park, which his family worked hard for, to be misconstrued by calling them landlords and developers; that the attorney is only half right; that they are landlords, but they are landlords who do not rape the land; that to state they do not have stormwater management is ridiculous; that Riverdale Park began over 120 years ago by his great grandfather, William Russell Clark; that he held powwows on the waterfront; that this was performed before the establishment of the Delaware Memorial Bridge, Chesapeake Bay Tunnel and Bay Bridge; that mostly people attended the powwows by water or by horse and wagon; that the people who liked the powwows and the area began to ask his great grandfather to sell them land; that his great grandfather refused to sell the land, but offered to rent the land; that his great grandfather walked in his moccasins, pacing off the lots himself for the friends and family; that because the area is a beautiful location, one lot became two; that two lots became four; that currently there are 400 families who call Riverdale Park home; that the boat ramp area being proposed to be fixed will be done over his dead body; that his grandfather, Chief Little Owl, was killed in April 1971, near the boat ramp, attempting to protect his land; that Mr. Clark provided a historical summary of the events leading to his grandfather's death; that waiving documents from Maryland, which lose their authority at the State line,

is repulsive and sensitive; that he felt this should be considered; that how dare someone misappropriate his family's name and land by calling them a trailer park for 400 mobile homes; that there are 400 homes in Riverdale, that only a quarter of them are manufactured homes; that the remaining homes are stick-built cottages, with some of them being over 100 years of age; that he takes umbrage at lies being spoken at a public meeting, in front of his taxpayer dollars Commission; that the Commission is working for the citizens, not the devil; that it gets confusing for the citizens, as the hearing is the first opportunity to have the Commission's ear; that the people representing Stillwater Harbor have had the Commission's ear since 2021; that the question was asked regarding the impact on the property owners along River Rd.; that the Commission would be hearing from Ms. Anna Larson, who's property fence is located on the right of way; that the properties are located along a 41 foot strip of road with no shoulders; that he is astounded to hear 90% of what he had heard; that the information provided is all speculative; that DelDOT had not performed proper studies, as they are waiting to hear what the developer will do; that they are waiting to see if the developer can obtain easements from people; that the developer will not receive an inch one from anyone; that he also spoke on behalf of his neighbor and friend, Mr. Robert Draine, Sr.; that the Mr. Draine, Sr. previously spoke for the group of families who live on Jackson Draine Lane; that as a young boy he would ride his bicycle down that road; that the road has always been 8 ft. to 12 ft. wide; that Jackson Draine Rd. runs east to west; that to the east of Jackson Draine Rd. are several homes; that these people purchased their land thinking they would have some privacy; that the developer has not requested permission to place the road, making everything speculative; that the only easement he knew of, is the easement that allows Mr. Daryl Jackson and his wife, Mrs. Barbara Jackson to build the home, in which their son previously spoke about and now lives in; that the intention of the law and the intention of agreements means everything; that it was never intended to tact it onto 60 acres; that it was not intended for 123 people to have easements; that all of the streets within Riverdale Park, other than Clark Ave., were given Indian names; that his grandfather died when the Chippewa Ave. was halfway completed; that he and his father completed the route when he was 13 to 14 years of age; that upon completing the lots for the 400 homes, he father stated they were done; that he was young, dumb and liking money, questioned his father why they would stop and not expanding Riverdale into the adjacent fields; that his father replied that he should not be greedy; that consideration and worry could not only be given to the homes for the people, but also the homes for the animals; that in the fields left open is where all the water, which could be received from the road, gets soaked into the farmland; that Riverdale Park may not have the stormwater management proposed by development; that Riverdale Park did not create the destruction as other stormwater management had caused; that Riverdale Park is mostly wooded; that woods help keep the land where it is; that some parts of Delaware are located under sea level; that Delaware has the lowest mean level elevation of any State in the Country; that this is the reason they have always kept trees in Riverdale Park; that the project's developers will not do this, as no developer keeps trees; that to a developer, a tree is an enemy; that Riverdale Park's stormwater management is letting Mother Nature do her thing, by keeping the lands and beach lands open; that they have close to 100 acres of farmland open; that all lots within Riverdale Park have very old trees, some of which are over 100 years in age; that their stormwater management is working with nature instead of against nature; that the Applicant's team mentioned a letter from the Department of Agriculture; that he stated maybe the Department of Agriculture did not do their homework either; that he stated the Sussex County Online Land Use Docket was down that day; that the public could not access the docket; that people just getting notified of the application were not able to submit letters; that the map had changed on the docket and the development description was missing; that a member from the group was instructed to refresh in order to resolve the issue; that he questioned how would they have known to refresh; that everything he had heard from the developer was speculation of what could happen and what might happen; that he knew Mr. Draine would not sell his land; that he gained a lot of respect for Mr. Draine when he found out that Mr. Draine turned away a \$200,000 offer for a 60 ft. strip of land, being

less than two acres in size; that the developer was so hungry, they offered \$100,000 per acre for farmland, then offering more money and then came back for a third time; that he did not feel an environmental assessment over a couple of days replaces 63 years of living on it; that he sees eagles, hawks and osprey there all the time; that he has seen herds of 15 to 20 deer in the fields his father never developed; that he has seen wild turkeys; that all of this will be gone if the ridiculous proposal is allowed to pass; that he questioned where the wildlife will go; that because of the decisions made by the Commission, everything else is already paved over and destroyed; that there are only two last tracts of woods in the area, being the subject site's 57 acres and the close to 50 acres that he owns; that he frequently receives offer letters from developers as well; that when he leaves this world, that land will be left as it is; that the land previously belong to his great uncle Ferdinand Clark; that when his grandfather passed, he bequeathed the land to him; that he placed one single-lane road, which he named Ferds Rd. on behalf of his great uncle, who was also chief of the Nanticoke Indian Tribe; that sometimes rulers and calculators do not work; that there is a reason why pencils have erasers, because everyone makes mistakes; that he questioned how much the engineers could be trusted; that Baylis Estates engineers designed a system that flooded out the adjacent property of Indian Town Farm, which resulted in a multi-million dollar lawsuit; that he will not let this happen to his land; that the talk of there being no archeological significance of the property is utter nonsense; that the area is considered a hot zone of archaeological activity; that he had paperwork demonstrating where they denied having the State Historic Preservation Office come to the site to perform a survey; that Mr. Edward Otter does not work with the State Historic Preservation Office; that Mr. Otter is a paid archaeologist consultant; that he believed, that when someone is paid to do something, the person does what the payer wants; that when Sussex County's Sewer District came through, they did an archaeological survey of his family's lands, which are located adjacent to the site; that over 400 artifacts were found during that survey; that the artifacts were taken by Sussex County to be inspected with the County and State and then to be returned to the Clark family, who are the rightful owners; that the artifacts came from his ancestors; that the artifacts were taken 10 to 15 years ago; that he is still asking, and again making an official plea, to have his ancestors artifacts returned back to him; that if it sounded like he does not trust the government, it may be due to the fact the government stole artifacts from his land and will not return them; that the developer has stated they want to improve private lands without even knocking on a door; that flooding occurs all the time; that he wished flooding only occurred four to eight times a year; that he also wished he could drive the hour where he would only see one car every 80 seconds; that the area is overfull; that it is ridiculous to say there is no presence of historical markers; that there are several markers, known as gravestones, located at the Harmon family graveyard, located next to the site, of which the developer does not know about; that there are gravestones at the Clark family graveyard, which the developer also does not know about; that he knows the land like the back of hand; that he can attest much more than someone, who is being paid, to spend a few hours, on a few days to visit the site; that he has spent his whole life in the area; that he has visited the site to see the eagles and other animals; that his family has been in the area for an untold, uncountable number of years; that his family have been there so long that his family's DNA is in the land, and the land is in their DNA; that he spoke on behalf of his Nanticoke people, for himself, and for she who cannot speak herself, Mother Earth; that he speaks for the two-legged, four-legged, those with wings, those with fins, those who fly and those who crawl; that he can say that none of them want and need another development; that in his lifetime, he has watched beautiful Sussex County be destroyed by short sightedness; that we do not have to pave everything that is green; that there are no more areas for the wildlife; that if the project is permitted, there will be a dramatic extinction in the existing life; that the flooding issues are getting worse with more development allow on the uplands; that we are on the coast; that when he was a boy the area only flooded once to twice a year; that now the area floods routinely from rainfall; that he presented a video, which was taken by his drone, to the Commission depicting the issues he had spoken about; that the video showed the width and condition

of Jackson Draine Lane; that the lane is not suitable for an entrance or for fire trucks; that he is aware of what happens when the fire company gets involved; that when the Peninsula was being proposed, the fire company presented multiple times in opposition; that the developer of the Peninsula offered to purchase the fire company a new pumper and a \$100 thousand per year in perpetuity in exchange for the fire company to not oppose the Peninsula project; that he was not insinuating any agreements were made with the developer of Stillwater Harbor, but these agreements are often made; that he found it suspicious because the members of the fire company he had spoken to stated they would not take their half million dollar equipment down the lane; that if Mr. Draine wanted to the lane paved, he would have done it himself; that the Native American people and people of color who live back there, chose to live there because it is off the beaten path and they want it to stay that way; that he found it offensive that the taxpayers concerns could come second to people who are not living here yet; that he understood the County must have growth; that overgrowth by definition is cancer; that we need to stop the cancer from eating up what little is left of Sussex County; that he is concerned about the safety of River Rd.; that he could count more than two accidents; that it is difficult to have mailboxes or fences, as they are often knocked down, because of the narrowness of the road; that if the Stillwater Harbor plan made common sense, why would they go through the trouble of acquiring the second entrance; that the people in the community need to be protected; that the community is stretched to its limit; that if there is a crime in the area, the police response is not fast; that he is part of a group called Save Oak Orchard who is highly opposed to the project; that a good portion of the group is made of people who have not lived in the area for a millennia like the Nanticoke, who have lived in the area for two to three hundred years; that these people moved to the area five or less years ago, thinking they were purchasing a little piece of paradise; that those same people now come to him saying if they knew what Sussex County was going to do, they would have never purchased their homes; that this should tell the County something; that he could not understand how the placement of a development would help the flooding issues; that he remembered Senator Carpenter stating on camera that the flooding issues were ridiculous and must be fixed; that State representatives stated the same thing; that study after study have been performed; that not one suggestion was made stating a 123 home development would fix the issues; that he felt the proposed project needed to be knocked down and stopped; that there was no reason the project should have gotten as far as it had with the speculation, falsehoods, twisting of truths and the denigration of history; that any developer who can not tell the difference between mobile homes and cottages has no business developing homes; that he presented to the Commission a second video which reflected the flooding issues of the area; that the video showed the trees existing in the area; that trees hold back erosion and soak up rainwater and all the things that produce flooding; that if Stillwater Harbor is approved another 300 vehicles will instantly be on the roads; that there is a way of balancing growth and preservation; that it is not an either-or situation; that it takes higher thinking and looking beyond the almighty dollar; that he respected the County and the job the Commission holds; that the meeting was the first chance for the public to be heard; that Stillwater Harbor had the Commission's ears for two years; that the people in opposition have only had a few hours; that there are existing artifacts and two cemeteries that the developer does not know are there; that tribes are like families and do not tell all their secrets; that until the early 1980s, it was legal in Delaware to dig up Native Americans; that he and his father worked hard for years to have the first law passed in any state to protect Native American relatives; that when Indian robbers were found, the judges would rule it not that important; that due to this, his tribe will never disclose where all of the burial grounds are located; that he often gets told how the residents of the area love the scenic views his family's land provides; that the proposed development will disturb the quality of life for the 2,000 people who call Riverdale home; that on behalf of his family and himself, he implored the Commission to deny the proposal of Stillwater Harbor.

Ira Brittingham stated that to make the road wider, the developer would have to purchase his property and that will never happen; that the road is only 43 ft. wide; that they need 800 ft. and only have 120 ft.; that there is no easement for this development, and it would cost \$30,000,000 to fix the flooding issues.

Dorothy Dobbin stated that she has lived in Riverdale since 2009; that she has a Master's in Urban Planning; that the Developer comes to the Commission for permission to build this subdivision but where are the guarantees; that the concerns are safety on the road and flooding; that the road has many turns and blind spots; that the proposed entrance is on a blind spot on the road; that the Developer states that their stormwater management system will alleviate the flooding, but where is the water going to go!; that most of the homes are close to the road and there is no room to widen the roads; that the residents do not want this development; that the Quality of Life Act of 1988 states that "The most appropriate use of land, water and resources consistent with public interest and to deal effectively with future problems that may result from the use and development of land within their jurisdictions"; that this is a law and should be followed; and that this development will affect the wetlands so we request that you deny this development.

Janet Le Digabel stated it sounded as if the attorney was threatening to sue the Commission if they did not approve the project; that she stated all of the people present in opposition could also sue the County as well; that within the PLUS report, the developer stated they would comply as the answer to many comments and she asked who the watchdog would be to make sure the developer does not cut into the buffer.

Ms. Wingate stated that there are inspections by Authorities.

Ms. Le Digabel stated that cutting 43 of 48 acres of wooded land does not constitute a superior design in her opinion; that there are letters from DNREC and the Department of Agriculture stating that there is a drainage issue; that the plan before the Commission does not meet 99-9C of Sussex Code for the following reasons:

1. Integration of the proposed subdivision into the existing terrain and surrounding landscape – cutting down trees does not do that.
2. Minimal use of wetlands and floodplains – does not do that.
3. Preservation of natural and historical features- does not do that.
4. Preservation of open space and scenic views – does not do that.
5. Minimization of tree, vegetation, and soil removal and grade changes– does not do that.
6. Screening of objectionable features from neighboring properties and roadways– does not do that – does not do that.
7. Prevention of pollution of surface and groundwater– does not do that.
8. Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding, and design of drainage so that groundwater recharge is maximized – does not do that.
9. Provision for safe vehicular and pedestrian movement within the site and to adjacent ways – does not do that.

Ms. Le Digabel stated that a Commissioner has said that if the Developer meets all 17 items in the Code and the Commission denies the application then the County could be sued; that although the Commission has to follow County Code, they should also use common sense; that the Developer uses paid

professionals but the Commission has to listen to the residents also; and that to approve this application would be dangerous to residents.

Kenneth Clark stated that he owns all the land at the Chief Road intersection; that he owns the beach and boat ramp; that he has lived there all his life in his grandfather's house; that he sees the flooding in this area more than any other person; that the flooding comes up into his driveway that he has to drive across the field to get off his property; that sometimes the flooding is over waist deep; that he takes issue with the comment made that his family are developers; that the community owned by his family is over 100 years old; and that the family made a conscious decision to leave the other 100 acres as farmland; that the Developer states that the flooding won't go away if Stillwater is not built and that is true, but it will get worse if Stillwater is built; that the flooding has gotten worse with the all the developments in the area; and that this development will adversely affect his home and that of his tenants

Mr. Clark submitted photographs of the flooding in this area to the Commission.

Colby Norwood stated that he is here on behalf of Ida Wheatley and that his family is present; that they are not selling their property on River Road which is the proposed entrance to Stillwater Harbor; that if the road was widened, it would put the turn lane 5 feet from the back of his house; that this would create a safety issue; that it is a curvy road and in 2006 a house west of his home was hit and his neighbor was killed; that those comments were on behalf of his grandmother; that now speaking for himself; that he is a full-time firefighter at Lewes Fire Department and an EMT; that this County is not up to par on emergency response; that in the area of Stillwater the emergency responders are mostly volunteer and they have no way to transport people to the hospital; that the company that covers this area has only two crews which cover this area; that the primary medic team is one crew (2 medics) which is paid for by the County; that any time there are more calls for response than there are medics available, the response times are at least 30 minutes; that the knox box in the emergency entrance can only be accessed by the Indian River Fire Company and will not be able to be used by other companies if they are called to assist when Indian River is not available or at other calls; and that the entrance and the emergency side are very poor planning.

Mr. Norwood submitted paperwork to the Commission.

Mr. Robertson stated that all documents submitted this evening will be uploaded to the County Website and will be available for the public to view within the next day or two.

John Hardy stated that he is the son-in-law of Kenneth Clark; that he has a degree in Environmental Science and is a certified construction reviewer in Delaware; that he looks at compliance for Stormwater Management plans; that the Developer has revised the stormwater plan to move the access road and lessen the number of ponds; that more water will not be going to the western end because they are making all of the inlets flow in that direction; that it is a wetland that should have been an inlet, meaning that the road should never have been put there; that when it rains that whole area fills up trying to reach the bay, not the other way around; that putting in a pipe underneath there isn't going to do anything; and that Sussex Conservation District is understaffed and not able to do what needs to be done on these sites.

Jennifer Peasnell stated that she graduated with a Bachelor of Science in Wildlife Ecology and Marine Studies; that she understands the Coastal Ecosystems; that she grew up in Long Neck but lives in Milton now; that Land Rights has allowed Developers to not follow County Code and wreak havoc on

the environment, disturb and destroy native and cultural lands, and impact the lives of human beings who are devastated by this mess; that she has seen what Developers have the power to do; that the idea of private lands rights only belong to Developers; that in the PLUS review DNREC has cited hydrological changes that occur from cutting down one of the last remaining forests 43 acres in Oak Orchard which will cause drainage and flooding for the residents of Oak Orchard; that DNREC has stated this in the PLUS review; that DNREC has stated that there are “hydrological shortcomings” with these development plans and that they will not protect natural hydrological processes; that you cannot change the science and that you cannot take the word of those being paid by the Developers and you must do your due diligence; that Section 99-9C calls for consideration of the “preservation of natural and historical features”, it also calls for the consideration of “provision for safe vehicular and pedestrian movement within the site and adjacent ways”, that Ancestral land rights have been continuously stripped away in Sussex County and people are losing portions of their land due to eminent domain; that landowners will lose portions of their land for the “betterment” of roadways due to this development; that a developer’s land rights are prioritized higher than the land rights and the safety of residents in Sussex County; that the actual people who live here have far fewer rights; that with this development there is no “preservation of natural and historical features”, no “minimal use of wetlands and floodplains”, no minimization of tree, vegetation and soil removal and grade changes”, no “integration of the proposed subdivision into existing terrain and surrounding landscape”, no “prevention of pollution of surface and groundwater”, no “provision for safe vehicular and pedestrian movement within the site and to adjacent ways”; that none of these provisions were considered; that there will be effects on “area property values”, “area roadways”, and “area waterways” and you can expect that these effects will not be positive; that your job includes saying “no” when a developer proposes development plans that are harmful to the community; and that The Center for the Inland Bays recently released their report from 2021; that they gave the Inland Bays a “D” rating and expressed their concerns; and that the quality of the Bay water is getting worse.

Ms. Peasall submitted her notes to the Commission.

Annabella Larson stated that she is going to show a PowerPoint presentation; that she lives directly across from the proposed entrance way of Stillwater; that she opposed everything stated by the developer’s team; that her biggest argument is that one cannot compare the codes and policies of Maryland to Delaware; that if the developer were to submit this proposal in Maryland, it would be required by law to have a 1,000 ft. buffer, as it would drain directly into the Chesapeake Bay; that she had worked 30 years as a Fish & Wildlife employee at Primehook National Wildlife Refuge in Milton; that she worked closely with DNREC and all of the equivalent counterparts; that she previously wrote a 1,000 page Comprehensive Conservation Plan for the refuge; that she is a professional in NEPA (National Environmental Protection Agency); that she recently retired, however this project’s proposal has turned her into a community organizer; that everything stated from the Stillwater Harbor professionals are erroneous; that there are federally endangered species currently using the plot of land; that the bald eagle had been delisted as endangered, but there are still several laws protecting eagles resting or nesting in any area; that based on her professional opinion, one cannot conduct a two hour visit to the site and capture all of the animals and birds who use the site; that she has seen eagles perch on her flagpole located at the end of her pier; that currently a pair of osprey are building a nest in her lobolly trees; that for the past three years, after being given permission, she would visit the site to bird watch; that she recorded the species she observed both nesting and visiting the site; that there are two separate operational lists in Delaware; that DNREC has their own State Endangered Species list; that she presented her PowerPoint presentation to the Commission; that she showed photos of a

Pileated Woodpecker, a Coopers Hawk, and a Carolina Wren which she had seen nesting in the woods; that the developer's Environmental Assessment was highly superficial; that the NEPA law states that one must consider, after analysis is performed, what the short-term and long-term impacts will be; that her PowerPoint contains statements and quotes provided from Sussex County's Comprehensive Plan and the EPA (Environmental Protection Agency) regarding the problems of water quality in Delaware; that on the EPA website it provides a water quality report card; that 99% of all Delaware rivers and streams, accounting for 1,410 acres, failed; that of the lakes, ponds and reservoirs, consisting of 2,846 acres, 97% failed; that out of the 30 sq. miles tested of the Inland Bays and estuaries, accounting for 902 sq. miles, 100% failed; that 100% of the 2.6 miles of oceanfront beaches failed; that these percentages are based on the Federal Water Quality standards; that 98% of the Indian River Bay fish, aquatic and life waters failed; that 100% of the Indian River Bay shellfish waters failed; that documented key stressors of Delaware wetlands are wildlife, plant and animal habitat destruction, lack of appropriate buffers, and altered hydrology from ditching; that Delaware has the most miles of tax ditches in the Union, being over 2,000 miles; that DNREC does provide a wetland loss report card; that per DNREC's website, 20% of wetlands, consisting of 57,517 acres, were lost over the last 20 years; that the remaining wetland coverage is approximately 295,000 acres (75%), which are rated as highly stressed habitat conditions; that Oakwood, Oak Orchard and Riverdale communities are the oldest and most unique coastal area in the State; that she had major concern with the compliance of the quality of life law, which is codified in the Delaware regulations; that she suggested a moratorium; that they will work hard and contribute to the long-term threats to protect the last remaining local salt marsh, tidal wetlands, forest resources, wildlife habitats and cultural resources; that the quality control of waters and quality of life laws need to be followed; that eastern Sussex County is number one in the economic activity and revenue generator in tourism; that she does not understand how it is possible to sustain our tourism; that it jeopardizes the \$7 billion industry; that the local citizens and communities are committed to protecting the diminishing natural and cultural resources; that they demand to stop the pollution of their air surface, waters and groundwaters and they demand measures be taken to reverse the severe degradation of the County.

Chairman Wheatley ended Ms. Larson's presentation as it was no longer relative to the Application.

Eldridge Johnson stated that he resides on Norwood Lane which connects to Jackson Draine Lane; that he opposes the proposed emergency exit on Jackson Draine Lane because he is concerned about protecting his farmland which has been in his family for generations; that the road is a gravel road maintained by the current residents and that he is also concerned about the flooding.

Teresa Ziegler-Townsend stated that she lives on River Road; that the numbers don't add up; that up until the hearing she only had access to the 2021 application; that when calculating the numbers on total acres, open space, tidal wetlands, non-tidal wetlands and the number of homes, it only equaled to about five homes per acre; that five homes per acre is a lot more than the proposed plan at 2.28 units per acre; that as she listened to the application's presentation, the numbers kept changing; that the only numbers she heard present which remained the same were the total site acreage of 53.91 acres and the proposed number of units per acre; that she questioned where the open space would be located; that she believed the proposed amount of open space was 47%; that this meant all of the proposed homes would be located on 50.2% of the site, but not evenly distributed throughout the site; that additionally she was concerned with the proposed number of 1,058 trips per day; that if one were to divide the 1,058 trips into 24 hours, it would equal 44 cars per hours; that this equals 1.1 car for every 1.36 minutes; that she had previously heard a vehicle every four minutes and she requested the Commission take the numbers and keep it simple.

Mr. Whitehouse stated the gross acreage of the site must be reduced first for the presence of wetlands, and then divided by the number of total acres of the site, being 53.91 acres; that the site area is 53.7 acres, plus additional acreage; that the numbers are presented within the data column on the title sheet, located on the first page of the plan and the plan reflects a total site area of 57.107 acres, which is the gross acreage for the purpose of the way acreage is calculated in the Code.

Mr. Robertson stated staff will be reviewing the plan, acreage numbers, and densities with a fine-tooth comb; that staff does not take a developer's word and staff will perform their independent take-offs to ensure the information is correct.

Mr. Jan Harmon, Jr. stated he owns the property across from the proposed emergency exit; that the developer came to him previously to obtain access for the easement, at which time he refused; that he did not understand how the developer is permitted to cross over his property for the proposed emergency road; that he questioned how residents will get to the store, during episodes of flooding, if the easement is strictly for emergency purposes only; that it was previously suggested by the fire company that residents would enter and exit from the easement when there is flooding; that the Commission has suggested the easement would only be utilized by ambulances and fire trucks and he submitted into the record documentation relating to his ownership of the easement.

Chairman Wheatley stated it was suggested that there is an existing easement, which was granted years ago, which travels with the land the developer has purchased; that the Commission plan to investigate the proposed easement and it has been suggested the homeowners association would have a key to the emergency access gate.

Ms. Patty Deptula stated she resides in Georgetown; that her main concern is to the disappearance of woodlands and species in Sussex County; that she believed the site had many species; that although some species are not endangered or threatened, they are still losing their homeland and habitats; that if the species are not endangered, they soon will be; that the amount of development that has occurred is insane; that she agreed with the concern regarding the wetlands and the flooding issues; that trees and vegetation provide the oxygen we need to live; that vegetation take up our carbon dioxide, which is a crucial part of a healthy ecosystem; that she does not want to see the requirement for air districts, like we have sewer districts; that sewer does nothing but promote development; that when sewer was placed, it was stated it was to serve the existing area and take the septic systems offline; that the sewer was not intended to provide for the proposed type of growth; that she felt the proposed property would be an exceptional acquisition by the Sussex County Land Trust, to be left as a natural, undisturbed wildlife area; that Councilman Hudson previously expressed the same viewpoint at a previous meeting; that Council President Vincent was recently quoted in the Cape Gazette stating that *protecting Sussex County's natural, unspoiled landscapes is critically important, not just to ensure that we preserve open space for future generations, but also to safeguard the very essence of who and what we are as a community, it is the quality of life and beautiful scenery that help make this area special and the County is proud to do its part*; that she requested everyone do their part to help conserve the County's natural lands, including the beautiful proposed track of land; that the Commission should listen to the people's objections to the proposal by denying the subdivision; that she recommended that the property be included on the Sussex County Land Trust acquisition list and she ended with a quote from biologist, Mr. David Attenborough, which stated, *"How could I look at my grandchildren in the eye and say I knew about this, and I did nothing?"*

Ms. Stevenson stated the Sussex County Land Trust is a nonprofit and donations can be made to it.

Ms. Judy Rose Seibert stated she resides in Lewes; that she requested the Commission use §99-9C of the County Code to deny the subdivision proposal for all the reasons previously mentioned and for all the testimony given; that she requested the Commission honor Chief Clark's testimony of his ancestors being buried on the grounds; that the Commission propose preservation of the land and its cultural legacy; that the Commission honor the Nanticoke people, from whom we have taken much land; that during the school year, when there are occurrences of flooding, many school children who are normally dropped off at another point, are required to be dropped off at the local fire station because the buses cannot get through the flooding; that this fact adds additional danger to the school children within the area; that in the chance the subdivision were approved, she requested a condition be placed prohibiting the cutting of trees within the buffers and that the buffer distance be marked off before bulldozers be allowed onto the site; that this was a previous issue for the Brentwood subdivision; that on the Brentwood site, 100 year old trees were taken down because the Preliminary Site Plan allowed it; that she requested the Commission place a condition that all mature trees be protected, within the buffer area, and having the buffer area marked for not only the Stillwater Harbor project, but for all future applications as well.

Ms. Juli Decker stated she lives along River Rd.; that she wanted to confirm that the school will call in the middle of the day, while she would be at work, informing her that she would be required to pick up her children from the fire hall due to the flooding and that it is a bad situation.

The Commission found there were five people who wished to speak by teleconference in relation to the Application.

Ms. Eul Lee spoke with concerns regarding the removal of trees, erosion, and saltwater intrusion.

Ms. Tina Romey spoke with concerns regarding the existence of eagles at the site, the inability of school buses to pick up and drop off children; that she stated she had attended the meeting in person but had to leave due to the length of time and that the citizens pay the Commission to be present and help.

Ms. Jessica Eckbold spoke with concerns regarding the price range for the proposed homes within the subdivision, which will price out anyone currently living within the area, and will be geared toward out-of-state residents; that she questioned where all of the children within the community will go to school with local schools currently being at their limit and the additional stress the development will bring to the local healthcare system.

Ms. Susan Petze-Rosenblum stated she agreed with all of the previous statements in opposition; that she felt the conditions of §99-9C of the Code were not followed, especially regarding the flooding issues.

Ms. Dana Norwood spoke with questions regarding the application; that she questioned how stormwater drainage would be improved with the development, how much runoff would be generated in comparison to the runoff that currently exists, if the open space included the existing woodlands, retention ponds, and walking trail, how the environmental assessment was determined, when and how long the environmental assessments were performed, nutrient runoff and she stated she has seen bald eagles at the property.

Mr. Erikson stated the post-development included the forest; that the wooded areas would be retained; that they would establish a limit of disturbance for the project, and that everything outside of the limit

of disturbance area is considered the forested area in the proposed; that the proposed mulch trail has been changed to a wood chip trail; that the intention is to meander the trail in an attempt to avoid tree loss; that the intention is not to cut out a path exactly as is; that the pathway will be staked out with the effort to retain all of the trees and minimizing clearing and the proposed open space for the project complies with the open space definition as defined within the County Code.

Ms. Peet stated that the standards for environmental assessments are provided within County Code, under §115-194.3, and are not regulated by NEPA.

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

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

Ms. Stevenson stated a citizen had testified that there was difficulty accessing the online docket to obtain information and submit comments.

Mr. Whitehouse advised the Commission that staff had requested that any written comments be submitted by close of business yesterday, Wednesday, April 26, 2023; that the evening of April 26th, 2023, an update was rolled out to the online land use docket; that if citizens had their web browser open prior to the update it did create an error; that staff did inform citizens who contacted the office to press F5, which cleared out their cache and web browser, allowing them to access the docket; that for any citizen who was accessing the docket for the first time, there were no issues at all that and once staff was notified, staff rolled back the update to correct the issue.

Mr. Robertson recommended, out of an abundance of caution, the record be left open until the close of business on Friday, May 5, 2023, to allow for additional written comment; that there was a legal opinion provided in the record, within Exhibit 20, referring to a recorded plot plan; that he would like the record to remain open to allow him to obtain and review the plot plan regarding the easement; that a deed was submitted into the record that also referred to the same plot; that the newly adopted buffer ordinance does not apply, as the application's submission predates the Ordinance's adoption; that it was stated the project would comply with the buffer Ordinance, and he would like to get Sussex County Engineering's opinion on the compliance with the new Buffer Ordinance as it is the first complex application to conform to the new Ordinance.

Mr. Mears questioned the issue of potential burial grounds being located on the property.

Chairman Wheatley stated he was considering the same issue and he deeply understood why the community would be reluctant to point out the location of the burials, however, if the graves are located on the proposed property, it would change the complexion of the application substantially.

Ms. Wingate stated she is concerned about the emergency access.

Ms. Stevenson stated she is concerned about the ability of future residents and existing residents to enter and exit the site and area.

Mr. Mears stated he is equally concerned about the proposed main entrance and if there is enough existing property to widen the road per DelDOT's requirements.

Chairman Wheatley stated the road is 42 ft to 46 ft; that meeting the requirements could be challenging as he does not suspect anyone will be willing to give up their property; that it is their right to not do so, and the residents cannot be faulted for that.

Ms. Stevenson stated one cannot fault a property owner for wanting to develop their property either.

Chairman Wheatley stated that for all the stormwater technology that we have, drainage does still seem to get worse when development happens; that something has certainly changed in the area; that the folks who have lived in the area for years are kind of the experts on what is happening in the area and there are a lot of circumstances that require the Commission to think about.

In relation to 2021-23 Stillwater Harbor. Motion by Ms. Stevenson to defer action, leaving the record open to allow for:

1. Additional written comment until the close of business on May 5, 2023
2. A report from Sussex County Engineering regarding the resource buffer shown on the Preliminary Site Plan
3. The analysis of the subject application easement

The motion was seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Meeting adjourned at 9:41 p.m.

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