

THE MINUTES OF THE REGULAR MEETING OF APRIL 8, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday afternoon, April 8, 2021 in Room 540, Carter Partnership Center, Delaware Technical Community College, 21179 College Drive, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III and Mr. Nick Torrance – Planner I.

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

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

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the March 11, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 4-0

OTHER BUSINESS

The Cove at Sandy Landing (2005-68)

Revised Subdivision Plan

This Revised Subdivision Plan proposes to modify the sidewalks within the subdivision. The community wishes to have only a portion of the sidewalk completed due to the low lot density and aesthetic reasons. The Planning and Zoning Office has received documentation that 100% of the existing property owners within the subdivision consent to this proposed change. The Sussex County Engineering Department supports the proposed modifications. The Planning Commission approved the Final Subdivision Plan at their January 10, 2010 meeting. Tax Parcel: 134-6.00-161.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Ms. Stevenson asked if the request to Revise Subdivision Plans to eliminate sidewalks would continue if sidewalks are not put in until after utilities and houses are built.

Mr. Robertson stated that this is an older subdivision that dates to 2005, that there have been changes to Chapter 99 with regard to the road standards, one of the things addressed was the roads, the drainage, the curbing system, the swales, and the sidewalks would all work together and you would know where they were with regard to the right-of-way and lots and this would not be an issue going forward; that it has been solved for the newer developments.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Revised Subdivision Plan. Motion carried 4-0.

Knoll Acres (2005-3)

Revised Subdivision Plan

This Revised Subdivision Plan proposes to remove the sidewalks from the plan. The sidewalks have not been installed and due to slope restrictions and existing utilities already installed creates a major hardship

to property owners. The Planning and Zoning Office has received documentation that 51% of existing property owners within the subdivision consent to this proposed change. Tax Parcel: 230-20.00-2.00. Zoning: AR-1 (Agricultural Zoning District)

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

S-21-05 Donovan's Painting and Drywall, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 2,599 square foot office for a contracting business and a 1,794 square foot storage building. The plan includes 13 parking spaces, an infiltration basin, and other site improvements. The property is located on the south side of Lewes Georgetown Highway (Route 9), approximately 215 feet southwest of Church street, in Rehoboth Beach. The site plan has been submitted pursuant to Conditional Use No. 2188 which was approved by the Sussex County Council on October 29, 2019 and adopted through Ordinance No. 2686. Staff note that a lot consolidation was approved for the subject tax parcels on March 10, 2021. The Preliminary Site Plan complies with the Sussex County Zoning Code and all conditions of approvals. Tax Parcels: 334-5.00-205.01 & 208.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff have received all agency approvals.

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

S-21-06 Tidewater Utilities, Inc

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 962 square foot, 160-ft high elevated storage tank and other site improvements. The property is located on the west side of Mulberry Knoll Road (S.C.R 284) in Lewes on the grounds of Beacon Middle School. The site plan has been submitted pursuant to Conditional Use No. 2240 which was approved by the Sussex County Council on November 10, 2020 and adopted through Ordinance No. 2751. The Preliminary Site Plan complies with the Sussex County Zoning Code and all conditions of approvals. Tax Parcels: 334-12.00-107.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

Lands of Manship

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 13.98-acre +/- parcel of land for the creation of two (2) lots plus residual lands with Parcel 1 having access off a proposed 50-ft ingress/egress access easement. Parcel 1 will consist of 2.00-acres +/-, Parcel 2 will consist of 2.00-acres +/- and the remaining lands consisting of 9.98 acres +/- . The parcel is located on the east side of Gravel Hill Road (Route 30). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-25.00-4.00. Zoning District: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

OLD BUSINESS

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

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

Ms. Wingate stated she was not present for the public hearing but has reviewed the information from the public hearing and is prepared to participate in the vote.

The Commission discussed this application which has been deferred since March 25, 2021.

Mr. Mears moved that the Commission recommend approval of C/U# 2206 for Linder & Company for Multi-Family Dwelling structures in a GR General Residential Zoning District based upon the record made at the public hearing and for the following reasons:

1. This property was the subject of Conditional Use #1848, which was recommended for approval by this Commission and then approved by County Council as Ordinance #2176. Ordinance #2176 was also for 200 multifamily units and is very similar to the current application.
2. Ordinance #2176 was for condominium multifamily units and this application is for apartment multifamily units. Under the Sussex County Zoning Code there is no distinction between the type of ownership for purposes of a land use decision.
3. The property is currently zoned GR General Residential. According to the Sussex County Zoning Code, the purpose of the GR District is to provide for medium density residential uses. The permitted density within the GR District is 4 units per acre. This application complies with the purpose and density of the GR Zoning District.
4. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including other GR properties, MR properties and C-1 properties. The use as multifamily residential project is consistent with these other zoning classifications.
5. GR Zoning permits buildings up to a height of 42 feet. The buildings on this site will not exceed the 42-foot height limit.
6. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
7. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single family homes, townhouses and multifamily units.
8. The project will be served or benefitted by amenities which include a clubhouse, pool, playground, sport courts, and walking paths.
9. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development traffic impact will be minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay

for offsite road improvements that are required by DelDOT as a result of this multifamily development.

10. This development is a design that is superior to the prior multifamily conditional use approved by Ordinance #2176 in several ways:
 - a. There will be additional forested and landscaped buffers around the perimeter of the site which will include 570 deciduous and evergreen trees that will be planted in the existing wooded area. This will provide additional screening from neighboring properties and roadways.
 - b. There will be less soil disturbance and grade changes due to the removal of the 12-acre pond that was part of the design of the prior project.
 - c. Ephemeral wetlands will be created for stormwater management, which will improve water quality, provide for the removal of pollution in surface and groundwater recharge and generally mitigate effects on area waterways.
11. Many people testified that “they would not have purchased” in nearby developments had they known that a multifamily project like this was planned. But in many cases, they moved to the area subject to an approved 200-unit multifamily project on this site. Ordinance #2176 was approved for such a use on this property in 2010.
12. With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.
13. This recommendation is subject to the following conditions:
 - a. There shall be no more than 200 Units within the development.
 - b. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s determination.
 - c. Recreational Amenities shall be completed within the project as follows:
 1. Community Center/Clubhouse, pool, playground and courts on or before the issuance of the 50th Certificate of Occupancy.
 2. Multi-modal recreational facilities by the 100th Certificate of Occupancy.
 - d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - g. No wetlands shall be disturbed except as authorized by State and Federal permits.
 - h. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
 - i. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - j. The applicant shall consult with the local school district’s transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
 - k. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
 - l. The developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety

- or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
- m. The Final Site Plan shall include a landscape plan for the development, including all buffer areas. This shall also depict the landscaping and vegetation included in the bermed area at the entrance to the community along Old Mill Road. Landscape and lawn maintenance shall be the responsibility of the developer or its assigns.
 - n. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.
 - o. There shall be an emergency entrance via Railway Road. This entrance shall be shown on the Final Site Plan.
 - p. There was testimony in the record about the adverse impact of the proposed maintenance buildings across Railway Road from the rest of this development. As one person stated, these facilities impact other properties while having no adverse effect on the new units they will serve in the new development. The Applicant shall safely remove the existing dilapidated farmhouse, outbuildings and chicken house from this area but leave the area as open space. All maintenance facilities shall be located within the larger parcel where the residential units are planned. Any maintenance buildings shall be located and screened from view of adjacent properties to mitigate any impact on them.
 - q. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - r. There shall not be any lighting at the rear of the proposed garages/storage buildings. There shall also be vegetation planted and maintained by the developer at the rear of each of these buildings to reduce the visual impact of them on neighboring and adjacent properties. The design and location of these vegetative screens shall be shown on the Final Site Plan.
 - s. The Final Site Plan shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried to recommend approval of C/U 2206 for Linder & Company, Inc. (Evans Farm) for the reasons and conditions stated in the motion. Motion carried 3 –1 with Ms. Hoey Stevenson dissenting.

C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2)
An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a Medium Density Residential District and a CR-1 Commercial Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 43.463 acres, more or less. The property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5). 911 Address: N/A. Tax Parcel: 234-29.00-67.00.

Ms. Wingate stated she was not present for the public hearing but has reviewed the information from the public hearing and is prepared to participate in the vote.

The Commission discussed this application which has been deferred since March 25, 2021.

Mr. Mears moved that the Commission recommend approval of CZ#1911 for an MR-RPC for SCHIFF LAND DEVELOPMENT CO, LLC for the development known as PATRIOTS GLEN PHASE 2 based upon the record made during the public hearing and for the following reasons:

1. This site has been the subject of prior land use applications and projects. None of them have ever been constructed. For example, this land was part of CZ #1605 for an MR-RPC and CZ #1606 for a change in zone to C-1. These were approved in 2007. The land was next the subject of CZ #1670 seeking to change the MR-RPC to CR-1.
2. This application seeks to return the land to an MR-RPC to incorporate it into the existing Patriots Glen development that is adjacent to it. The Patriots Glen MR-RPC was approved in 2019 as CZ# 1877 and Ordinance No. 2688.
3. This application seeks to add 128 single-family condominium units to the existing Patriots Glen MR-RPC for a gross density of 2.95 units per acre and a net density of 3.52 units per acre. This density is less than the maximum density allowed in the MR District.
4. This site is in the Coastal Area according to the Sussex County Comprehensive Plan. The expansion of the MR-RPC is appropriate in the Coastal Area.
5. The site will be served by central water and sewer.
6. DelDOT has stated that the developer will be required to make certain road improvements as part of this project. The expansion of this MR-RPC will not adversely affect area traffic or roadways.
7. The expansion of the existing MR-RPC is consistent with the character and trend of development in the area and will not adversely affect the neighboring and adjacent properties.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions, which are consistent with the conditions imposed as part of Conditional Use No. 1877 and Ordinance No. 2688:
 - A. There shall be no more than 128 residential units within the project.
 - B. The bulk area standards for the 128 units shall be as follows:
 - a. Front yard = 25 feet
 - b. Side yard = 10 feet
 - c. Rear yard = 10 feet
 - d. Corner yard = 15 feet
 - e. Minimum Lot Width = 60 feet
 - f. Minimum Lot Area = 7,500 square feet
 - C. Site plan review shall be required for each phase of the development.
 - D. All entrances, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements or in accordance with any further modifications required by Del DOT including required for Patriot Glen Phase I.
 - E. The development shall be served as a part of the Sussex County Unified Sanitary Sewer District and shall be constructed in accordance with County engineering specifications and regulations.
 - F. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with the applicable State and County regulations. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of Sussex County's Conservation District.
 - H. The interior street design shall be in accordance with or exceed Sussex County's street design requirements and specifications. The street design shall include sidewalks on both sides of the street.
 - I. There shall be a 30-foot forested landscaped buffer around the entire perimeter of the site.
 - J. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, including landscaping in all of the buffer areas.

- K. Construction and deliveries shall only occur from Monday through Saturday and only between the hours of 6:00 a.m. to 6:00 p.m.
- L. The Applicant shall form a Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- M. The Restrictive Covenants and Final Site Plan shall state that agriculture activities exist nearby, and they shall include the Agriculture Use Protection Notice.
- N. The amenities shall be combined with Patriots Glen Phase 1 to include a clubhouse/multi-purpose building, pool and patio area, with at least 24 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of the development upon the issuance of the 81st building permit.
- O. If required by the Indian River School District, a protected school bus shelter with related parking shall be installed at the entrance to the development. Alternatively, the Developer shall coordinate with the school district for another location, with a preference for the clubhouse building.
- P. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2) for the reasons and conditions stated in the motion. Motion carried 4 – 0.

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

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

Ms. Wingate stated she was not present for the public hearing but has reviewed the information from the public hearing and is prepared to participate in the vote.

The Commission discussed this application which has been deferred since March 25, 2021.

Mr. Mears moved that the Commission recommend approval of Conditional Use #2207 for CBB CEDAR PINES, LLC based on the record made during the public hearing and for the following reasons:

1. This has been the site of four prior Condition Use applications for multi-family dwellings. The most recent was approved as Conditional Use #2130 by Ordinance #2587 on July 24, 2018.
2. This Conditional Use is for 75 multifamily units.
3. The site is currently zoned MR Medium Density Residential, which permits up to four residential units per acre. This project is within that permitted density.
4. The Conditional Use will allow the development of this property in a way that is consistent with nearby residential communities and it is consistent with the prior approvals for multifamily units on this parcel.
5. The site is located in the Coastal Area according to the Sussex County Comprehensive Plan. Multifamily units are an appropriate use in the Coastal Area according to the Plan.
6. The Conditional Use will be served by central water and Sussex County sewer.
7. The Conditional Use will not adversely affect adjacent properties, roadways or other public facilities.

8. This recommendation is subject to the following conditions:
 - a. There shall be no more than 75 units within the Conditional Use area.
 - b. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
 - c. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - d. 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. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.
 - f. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
 - g. As proffered by the Applicant, the Final Site Plan and the recorded Declaration for the property shall prohibit the application of fertilizers or similar soil additives on the property by individual property owners. All such applications shall be managed by the HOA and a contractor of its designation using the Best Management Practices to seek to minimize the risk of runoff into the stormwater management system and the inland bays.
 - h. As proffered by the Applicant, all buildings shall maintain a 20-foot setback from the non-tidal wetland line and a 100-foot setback from the tidal wetland line. These setback areas shall be shown on the Final Site Plan.
 - i. The project shall be served by Sussex County sewer.
 - j. As proffered by the applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 40th residential building permit for the project. The amenities shall include a pool, tot lot, pickleball courts, community garden and dog park.
 - k. There shall be sidewalks on the interior side of the street within the development.
 - l. There shall be a buffer of at least 20 feet from the southern and western boundaries of the site. There shall also be a 35-foot setback from the northern boundary which shall include a 20-foot buffer. The Final Site Plan shall continue a landscape plan for all of those buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - m. Construction, sitework, grading and deliveries shall only occur from Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
 - n. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the Revised Site Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 - o. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2207 CBB Cedar Pines, LLC (Marlin Chase F.K.A. Marlin Run) for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/Z 1921 Stephen M. Sprogell

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex

County, containing 5.0 acres, more or less. The property is lying on the south side of Sprogell Lane, approximately 873 feet east of the intersection of Whites Neck Road (S.C.R. 347) and Sprogell Lane. 911 Address: 30261 Sprogell Lane, Dagsboro. Tax Parcel: 134-8.00-17.01.

Ms. Wingate stated she was not present for the public hearing but has reviewed the information from the public hearing and is prepared to participate in the vote.

The Commission discussed this application which has been deferred since March 25, 2021.

Mr. Mears moved that the Commission recommend approval of CZ#1921 regarding STEPHEN M. SPROGELL for a change in zone from AR-1 to an MR-RPC based upon the record made during the public hearing and for the following reasons:

1. This is a property that is surrounded by the Bay Forest MR-RPC. It will be completely integrated into that MR-RPC.
2. This expansion to the Bay Forest MR-RPC will consist of 23 new units. The gross density of the entire Bay Forest MR-RPC will increase from 2.19 units per acres to 2.33 units per acre. This remains significantly less than what is permitted under the MR Medium Density Residential Zoning District.
3. This expansion area will be interconnected with the interior roads of the Bay Forest MR-RPC and existing entrance onto White's Neck Road will be eliminated.
4. This expansion area will be served by central water and sewer.
5. The stormwater management of this expansion area will be integrated into the existing system within Bay Forest.
6. This expansion of the Bay Forest MR-RPC will not adversely affect area roadways, traffic or nearby property values.
7. Scores of letters were received in support of this Application and there was not any opposition to it.
8. This recommendation is subject to the following conditions:
 - a. The conditions imposed by Ordinance #1670 for Change of Zone #1526 shall apply to this application, with the exception that this Application shall add 23 additional units to the total number of permitted units.
 - b. The property that is the subject of this Application shall be integrated into the overall development scheme of the Bay Forest project.
 - c. The number of units associated with this Application shall be 23 units consisting of 15 single-family detached units and 8 townhouse units.
 - d. As a result of this Application, the total number of units approved for the Bay Forest Club MR-RPC shall be 936 units.
 - e. Before proceeding with any construction involving land that is the subject of this Application, the Applicant or Developer shall submit a revised Master Plan integrating this land into the Bay Forest Club MR-RPC.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1921 Stephen M. Sprogell for the reasons and conditions stated in the motion. Motion carried 5 – 0.

Mr. Hopkins joined the meeting at 3:40 p.m.

PUBLIC HEARINGS

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

2019-24 Stratus Estates (F.K.A. Cool Spring Meadows)

A cluster subdivision to divide 187.93 acres +/- into 226 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 north and south sides of Stockley Rd. (S.C.R. 280), approximately 0.65 mile southeast of Forest Rd. (S.C.R. 292). Tax Parcel: 234-5.00-30.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Preliminary Subdivision Plan, a copy of the Applicant's exhibit book, a copy of the PLUS comments and the Applicant's response to those comments, a letter from Artesian Resources which is included in the Applicant's exhibit book, a copy of the Applicant's TIS letter and submission, a copy of an email received from DelDOT dated February 17, 2021, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of TAC comments, and one written response to the Application and three mail returns. Mr. Whitehouse noted that this Applicant follows a previous Application which is Subdivision reference 2005-78 which was approved and recorded on December 11, 2012 for a total of 226 lots.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Fusco Properties, LP, that also present are two principals of that entity, Frank Vassollo, IV and Matthew Petrucci, Kevin Smith, Project Manager with Kercher Engineering and available by teleconference is the Project Manager, Merrit Burke; that this Application is a redo of a previous Application; that the property is located along Stockley Road and Cool Spring Road; that there are similar residential communities in this area which include The Reserve at Fortune Field, The Ridings at Rehoboth, Oak Crest Pond, Oak Crest Farms, and Heron Bay; that this property where the proposed subdivision will be is zoned AR-1; that there is some GR and AR-2 zoning in the area but the majority is AR-1; that when the previous application was approved the property had split zoning but now the property has all one zoning; that the property is divided by Stockley Road, that there is approximately 33 acres located on the south side and 154 acres on the north side; that the property is unimproved and the areas that are not wooded are currently used for agricultural purposes; that this Application demonstrates that the Cluster Subdivision is right for this property and is superior to a Standard Subdivision; that this property was the subject of a previous cluster subdivision known as Cool Spring Meadows; that plan had a different layout for the 226 lots and was not built and eventually pursuant to County Code it sunsetted; that the subject property is a heavily wooded parcel with 126 acres of existing trees; that one of the reasons that makes this plan superior is that only 15 acres of those 126 acres of trees is proposed to be removed; that 88% of the existing woodlands will remain after this subdivision is complete; that 66 lots would be located south of Stockley Road and are largely centered around the stormwater management pond; that the entrance to these lots will line up with the entrance to the 160 lots on the north side of Stockley Road; that those lots have a similar layout and are centered around the stormwater management ponds; all of the lots will have a minimum lot size of 7,500 square feet; that they will all be single-family detached homes; that the resulting density will be 1.21 lots per acre and is consistent with this property's density designation of Low-Density on the Future Land Use Map; that it is also consistent with the designation of Level 4 on the State Strategies Map; that the design of the project complements the existing characteristics on the site; that the lots will be placed on the existing open space areas so that there is a minimal disturbance of the woodlands that exist on the property; that the areas for the lots are approximately 41 acres and the areas for the interior roadways and streets are approximately 8 acres;

that there are approximately 24 acres of wetlands and are in the wooded area and a significant distance from where the homes will be built; that there is a smaller area of wetlands which is near where the amenities will be located; that the perimeter adjacent to the residential properties will have a 30-foot buffer to comply with County Code; that much of the buffer will consist of the existing woodlands but where that does not exist the Developer will create that buffer; that there are non-tidal wetlands on the site which will have a minimum of a 50-foot buffer; that there is an isolated area of wetlands and the information from the soil scientist stated that this area could be omitted from any wetlands delineation because of its size and a permit could be obtained to fill that small area; that DeIDOT did not require a Traffic Impact Study; that DeIDOT did highlight three off-site improvements; that it would require that Stockley Road be improved to local road standards from Forest Road to Cool Spring Road and from Cool Spring Road to the northern boundary line of the property; that there is a required contribution to a traffic signal; that an area will be designated for a shared use path and it should connect with the proposed interior sidewalk network; that an emergency secondary access will be in close proximity to the connection between the shared use path and the interior sidewalks; that there will be sidewalks on both sides of the interior streets; that the amenities for the community will include on the south side a tot lot and on the north side a tot lot, a pool, a pool house and an open field space; that a walking trail of approximately 0.25 – 0.50 mile will be installed throughout the wooded areas; that the clubhouse is designed with a parking lot and that is where the trailhead would be located; that the property is located within the Cape Henlopen School District and a bus stop location will be designated; that public utilities are available to the site and Artesian has indicated that it will provide water and sanitary sewer service; that in response to the TAC process, Delaware Electric Cooperative indicated that it will provide electricity to the site; that this property is not located in a wellhead protection area; that there are no known historical sites or archeological features or endangered species on the site; that the property is not located within a flood plain or flood zone; that a homeowners association would be created to manage the common spaces and amenities for the community; that the most notable change between this proposed project and the previously approved project is the non-disturbance of one tract of 78 acres of wooded area; that this project is a Low Density project preserving a significant forested area along Cool Spring Road, Forest Road, and Stockley Road; that this project meets the requirements of the Comprehensive Plan and the Sussex County Zoning Code – Chapter 99 and Section 25 of Chapter 115; and that for all these reasons Fusco Properties request approval for this subdivision.

At the conclusion of his presentation, Mr. Hutt submitted proposed Findings of Fact.

Ms. Stevenson commented that this is what she thinks of when she hears Cluster Subdivision where the homes are clustered together but there is a lot of open space remaining. Ms. Stevenson asked about the open field and the walking trail through the woods.

Mr. Hutt stated that the open field will be next to the clubhouse as there will be parking there for those who wish to drive; that it will also be the trail head for the walking path; and that there will be little disturbance in the woods just removal of underbrush to make a defined path but to let the trail remain as natural as possible.

Ms. Wingate asked if the residents on the south side of Stockley would have access to the amenities on the north side and if there will be a walkway to allow safe travel between both sides of the community.

Mr. Hutt stated that all residents will have access to the amenities and that the Developer is in discussions with DeIDOT regarding a walkway.

Ms. Wingate commented that DNREC have concerns about the wooded areas and she hopes that the trees will remain as stated by the Applicant.

Mr. Mears asked Mr. Hutt to clarify that the undisturbed forested area will remain permanently.

Mr. Hutt affirmed this and stated that the HOA should practice good forestry management such as removing dead trees and replanting to maintain the wooded areas.

Mr. Robertson asked about the location of the 0.05 acre of non-tidal wetland.

Mr. Hutt referred to the side plan and stated that it is to the rear of lot 149.

Chairman Wheatley asked about the speed limit on Stockley Road.

Mr. Smith stated that the speed limit is 50 mph on Stockley Road.

The Commission found that there was no one present in the room who wished to speak in favor of the Application and four people who spoke in opposition to the Application.

Mr. Allen Becker stated that there should be a study of the drainage issues in the area that current residents are experiencing prior to moving forward with this project.

Chairman Wheatley asked Mr. Smith to address the stormwater management for this project.

Mr. Smith stated that DelDOT has required there will be improvements to the drainage on Cool Spring Road and Stockley Road; that drainage will be taken into this site; that there will be four ponds which will be interconnected with an outfall to Pepper Creek.

Mr. William Low stated that he also has concerns about the drainage and additional flooding to his property which is located on Cool Spring Road; that traffic will be increased; and that he has concerns the Developer will want Phase II at a future date and will then remove the wooded areas.

Mr. Robertson stated that if this project does get approved the Site Plan will state that the wooded areas must remain as open space and the Developer would not be able to seek additional approvals for that area and in addition, it would not meet density requirements for the AR-1 district.

Mr. Arvid Seaburg stated there are considerably more wetlands shown defined by U.S. Fish and Wildlife than what was shown by the Applicant.

Chairman Wheatley explained that it not surprising because that information has not been delineated.

Mr. Seaburg stated his concerns regarding flooding and drainage.

Mr. John Ahern stated that he has concerns regarding the bald eagles on the site.

The Commission found that Eul Lee spoke by teleconference in opposition to the Application. Ms. Lee expressed the safety concerns for residents crossing Stockley Road between both sections of the development.

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

Prior to the recess, the Commission discussed Application 2019-24 Stratus Estates (F.K.A. Cool Spring Meadows). Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

C/U 2235 Brian P. Lessard, Lessard Builders, Inc.

An Ordinance to grant a Conditional Use of land in a GR General Residential District and an AR-1 Agricultural Residential District for an amendment of conditions of approval for Conditional Use No. 2129 (Ordinance 2603) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 10.76 acres, more or less. The property is lying at the southeast corner of Argos Corner Rd. and Coastal Hwy. (Route 1). Address: 22754 Argos Corner Rd., Lincoln. Tax Parcel: 230-7.00-95.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the previous PLUS comments for the previous CU application, a copy of the staff analysis, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of Ordinance 2603 and the minutes from the County Council meeting associated with that ordinance, a copy of the Applicant's proposed findings of fact and exhibits, and a copy of DelDOT's Service Level Evaluation response. Mr. Whitehouse noted that staff has received no comments in support or in opposition to the application and zero mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, Brian Lessard, that also present is Mr. Lessard. Mr. Fuqua stated that this is a request to modify a condition of approval for Conditional Use 2129; that an exhibit packet was submitted for the record; that the original Conditional Use application was for a storage facility at Argos Corner Road, just south of Milford; that County Council approved the use with the conditions stipulated by the Commission; that the facility has been partially constructed and is open for business; that the issue of this Application involves Condition K which stated "One lighted sign, with a maximum area of 32 square feet per side shall be permitted."; that the limitation of only one sign creates problems for both the business and for the public; that the property is shaped like a triangle and the longer sides border two roads; that Argos Corner Road is on the northeast and Coastal Highway on the southwest; that the entrance to the storage facility is on Argos Corner Road and that is where the permitted sign was placed; that sign will identify the business and the entrance to the facility; that entrance sign is 500 ft. from Route 1 and is blocked from view by two of the storage buildings on the site; that Route 1 is a principal arterial roadway with a

speed limit of 55 mph; that if you compare the traffic on both roads, Route 1 has 99% of the traffic volume; that with the condition for only one sign there is no way to advertise or identify the business to people traveling on Route 1; that the Applicant is proposing to locate a digital sign on his property along Route 1 which according to County Code is known as an Electronic Message Center; that there are specific provisions in the code regulating the operation of such signs; that the proposed sign will be an on premise sign identifying and advertising the storage facility; that while signs are generally prohibited

in GR and AR-1 zoning districts, they are permitted as part of a Conditional Use and that is the request before the Commission; that there will be no adverse impact on adjacent properties; that the land to the south along Route 1 is wooded, to the west is Route 1, on the other side of Route 1 is wooded and the land to the north and northwest is the location of the Taylor Marine business; that the proposed sign will not be out of character with the area as the Taylor Marine business has an existing electronic message center sign located at the northern end of their property; that the permit for that existing sign authorized 177 square feet per side and the actual sign is approximately 140 square feet per side; that Mr. Lessard worked with Rogers Sign Company to determine the minimum size sign that would serve the needs of the business but still be reasonably visible for the safety of vehicles on Route 1; that he has submitted two designs for the Commission to review; that both signs would be a maximum of 20 ft. high and one would be 78.6 square feet per side and the other 82.75 square feet per side; that both of those sign designs are significantly smaller than the Taylor Marine sign; that the facts of this request are unique and can be distinguished from other situations; that most times a business has frontage on one road and in that case one sign would be sufficient; that if a business was on an intersection that the placement of one sign to be visible from both roads might be an option particularly because traffic might be traveling slower or even stopped because of the intersection; that this triangular shaped land is a large through lot parcel containing approximately 11 acres; that one sign cannot be visible from both roads; that when this use was approved both the Commission and the Council recognized that this use was of a public character and was essential and desirable for the convenience and welfare of area residents; that a second sign on the property would serve the same purpose; that Mr. Lessard has made an effort to design a sign that will reasonably deal with the unique circumstances; that the additional sign will deal with the needs of the business; that it will provide information to area residents and the traveling public on Route 1; that it will have no negative or detrimental impact on neighboring properties; that it is not out of character with the area; and that the Applicant is requesting the approval of the amendment of Condition K to permit, in addition to the 32 square foot entrance sign, a second on premise sign with the maximum area of 87.75 square feet.

Ms. Stevenson asked where the location of the second sign would be on the property and why an electronic sign is necessary.

Mr. Lessard referred to the site plan and stated that the sign would be located at the edge of the parking lot located on the Route 1 side approximately halfway along that side of the property; that an electronic message center would be the best way to advertise the hours of the business, any upcoming sales and for visibility as it would be well-lit.

Mr. Hopkins asked what the setback is for the sign and would it affect visibility of traffic entering Route 1 from Argos Corner Road.

Mr. Fuqua stated that the sign would meet County setbacks and it will not hinder visibility as it will be much further south than the intersection with Argos Corner Road. Mr. Lessard referred to the site plan and showed the distance from Argos Corner Road.

Mr. Mears asked the Applicant to verify that the on-premises sign would be used exclusively for the Storage Center.

Mr. Fuqua stated that it is an on-premises sign and can only address the business on site.

Ms. Stevenson stated that her concern would be the brightness and flashing light for travelers on Route 1.

Mr. Fuqua stated that the sign could be dimmed or switched off during the night.

Ms. Wingate stated that DelDOT also has a standard for Electronic Message Centers.

Chairman Wheatley stated that he understands the need for a directional sign but that passersby can see that it is a self-storage center, and he has concerns about an electronic message center where people are frequently following too close and going too fast.

Mr. Fuqua stated that this is the type of sign that the business would prefer; that it is a modern sign; and that there is a similar sign in the area.

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

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

Prior to the recess, the Commission discussed Application C/U 2235 Brian P. Lessard, Lessard Builders, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

C/U 2244 Ramon A. Mendez & Alma Mendez

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a grocery store to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.39 acres, more or less. The property is lying on the south side of Hickman Rd. (Rt. 16), approximately 1,600 ft. east of Scotts Store Rd. (Rt. 36). 911 Address: 8354 Hickman Rd., Greenwood. Tax Parcel: 530-9.00-53.01.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's conceptual site plan and a survey, a copy of the staff analysis, photographs received from the Applicant, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and a copy of DelDOT's Service Level Evaluation response. Mr. Whitehouse noted that staff has received no comments in relation to this Application.

The Commission found that Mr. Ramon Mendez was present on behalf of his Application, that he would like to have a business on his property that is zoned AR-1.

Mr. Hopkins asked if the Applicant planned to renovate the block building on the property to use as the proposed grocery store and if the Applicant owned the house on the property.

Mr. Mendez stated that he and his family live on the property and that the block building will be renovated for the store.

Mr. Hopkins asked how many employees would work on the property and how many customers would be expected at one time and if there is adequate parking.

Mr. Mendez stated that this would be his wife's business and that she would be the only employee; that there is room for 8 – 10 cars at the front of the building with additional parking in the rear.

Mr. Hopkins asked if a sign was being requested and explained that the Applicant could request a sign up to 32 square feet.

Mr. Mendez stated that a lighted sign is requested.

Ms. Stevenson asked if there are plans to extend the building.

Mr. Mendez stated that there are no plans at this time to extend the building but maybe in the future.

Ms. Stevenson asked if the business would cause any issues with traffic and what the hours of business would be.

Mr. Mendez stated that it is a heavily traveled road but that this business will not impact traffic and that the hours would be 8:00 am through 6:00 pm Monday through Saturday with no hours on Sunday.

Ms. Wingate asked if the entrance would be from Route 16.

Mr. Mendez stated that it would be on Route 16.

Mr. Mears asked if there will be large delivery trucks coming to the property.

Mr. Mendez stated that there would not be large delivery trucks.

Mr. Mears explained that if the Application is supported that a drawing would be needed to show where the parking would be on the property.

Mr. Robertson asked staff if this property is located near the municipal boundary of Greenwood.

Mr. Whitehouse confirmed this and showed the proximity of the town to the subject property on the zoning map.

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

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

Prior to the recess, the Commission discussed Application C/U 2246 Ramon A. Mendez & Alma Mendez. Motion by Mr. Hopkins to defer action for further consideration, seconded by Mr. Mears, and carried unanimously. Motion carried 5-0.

C/U 2246 Bee Wise, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a real estate business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.709 acre, more or less. The property is lying on the northwest side of John J. Williams Hwy. (Rt. 24), approximately 0.37 mile southwest of Mulberry Knoll Rd. (S.C.R. 284). 911 Address: 20028 John J. Williams Hwy., Lewes. Tax Parcel: 334-12.00-24.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's survey, a copy of the staff analysis, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of the deed for the property, and a copy of DelDOT's Service Level Evaluation response. Mr. Whitehouse noted that staff has received five letters of support and none in opposition to this Application.

The Commission found that Ms. Alexis Gatti, Esq. was present on behalf of the Applicant, Bee Wise, LLC., which is owned and managed by Mr. Craig and Ms. Erin Beebe who are also present; that the property is approximately 0.71 acre to the west of Love Creek Elementary School on the west side of the highway; that the property is improved with a dwelling, a shed and a parking lot; that there are no plans to change the structures or the parking lot; that the property was previously approved to be a contractors office and prior to that it was a lamp shop; that the Applicants intend to use the property to operate a real estate business; that if the Conditional Use is approved no site conditions on the property will be altered; that the properties in close proximity include to the east farmland and next to that is the elementary school; that across the street is the middle school and in the same block is a hair salon; that to the west is a residence and Saddle Ridge Community and further down the road is a landscape business; that a Conditional Use here is appropriate given that the real estate business is consistent with the neighboring businesses along that highway; that traffic through this corridor is managed by a traffic light at the entrance to the schools which is just a short distance from this property; that the real estate office impact on traffic will be negligible; that the Conditional Use will have no detrimental effect on any of the neighboring properties; that all the lighting on the property is consistent with residential use; that there will be no large garbage dumpster on the property; that the office will operate during normal business hours; that the agents mostly work off-site and this site will be for sales and office uses only; that there are currently 12 agents working for this business; that the business is promoting the convenience, the prosperity and the welfare for the agents employed here but also provides a service to the inhabitants and future inhabitants of Sussex County; that there is no opposition to this Application; and that the property is buffered by landscaping and that landscaping will remain.

Ms. Stevenson asked if this would be a seven-day operation.

Mr. Beebe stated that the office would be available to agents seven days, but the majority of business is Monday through Friday.

Ms. Wingate asked the Applicant if he is requesting a sign for the business.

Mr. Beebe stated that there is a 4 X 8 sign on the property from the previous owner and it has been updated with the business logo.

Mr. Robertson advised the Commission that they should look at the conditions for the previous Conditional Uses on this property as it seems this will be a similar use.

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

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

Prior to the recess, the Commission discussed Application C/U 2246 Bee Wise, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Recess 5:20 P.M. – 6:00 P.M.

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

2019-29 Scenic Manor (F.K.A. Estates at Mulberry Knoll)

A cluster subdivision to divide 166.8 acres +/- into 319 single family lots to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County. The property is lying on the east and west sides of Mulberry Knoll Rd. (S.C.R. 284), approximately 0.67 mile south of John J. Williams Hwy. (Route 24). Tax Parcel: 334-18.00-43.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Preliminary Subdivision Plan, a copy of the Applicant's exhibit book, a letter of participation in the Transportation Improvement District (TID), a copy of the Applicant's Environmental Assessment and Public Facility Evaluation Report, a copy of the Applicant's Chapter 99.9C response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, copy of TAC comments, including Office of Drinking Water with the USDA, a copy of the PLUS comments for the Application including the Applicant's response, a copy of the Applicant's proposed conditions of approval, and a total of 138 written responses to the Application. Mr. Whitehouse noted that some of the responses were duplicates and staff has also received a 34-signature petition in opposition to the Application and a 585-signature petition in opposition to the Application.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, MKR Land Investment, LLC, and present are John Richardson on behalf of the Applicant, Chris Flathers, Morris Ritchie Associates, Joe Caloggero, Traffic Group and Matthew Jenette, Geotechnology Associates. Mr. Fuqua stated that this is an application for a single-family cluster subdivision to be called Scenic Manor; that the land is zoned Agricultural Residential (AR-1) and is located in the Coastal Area under the 2019 Sussex County Comprehensive Plan which is designated as a growth area; that the Application is a Coastal Area Subdivision as permitted by Section 115-194.3 of the Zoning Ordinance; that section provides that within the Coastal Area clustering of single-family lots to a minimum size of 7,500 square feet is permitted if central water and sewer are being utilized; that this Application was filed with the Planning and Zoning Office in December 2019 and predates the amendment to the Coastal Area cluster requirement which was adopted by County Council in February 2021; that Scenic Manor will be comprised of 319 single-family lots and recreational amenities on 166.8 acres of land located on both the east and west sides of Mulberry Knoll Road approximately 6,300 feet south of the Mulberry Knoll Road and Route 24 intersection; that the parcel on the east contains 132.2 acres and that would be the location of 258 single-family lots and the main recreational complex; that the smaller parcel on the west side of the road contains 29.9 acres and would be the location of 61 single-family lots; that the adjacent

land to the north and west is undeveloped land owned by JG Townsend, Jr. Company, to the south is the Mulberry Knoll subdivision and to the east is Arnell Creek and wetlands; that at the other side of Arnell Creek are the Fairway's Village subdivision and the former Old Landing golf course which was approved as a 217 lot MR-RPC in 2016 to be called Osprey Point; that the Applicant is under contract to purchase the land from Thomas Best and Sons, Inc.; that the Comprehensive Plan states that a range

of housing types should be permitted in the Coastal Area including single-family, townhouse and multi-family units; that the plan encourages the use of central water and sewer; that no zoning changes are being requested, the land will remain in the AR-1 zoning district and detached single-family dwellings on individual lots is a permitted use; that in the Coastal Area the Cluster design can be utilized to create lots with a minimum size of 7,500 ft. and the allowable density is 2.178 lots per acre; that the State Investment Level Map is not an applicable land use regulation but is a guide for State spending; that on page six of the document it clearly states “It is equally important to note, again, that while this document and map series directs state investments, it is not a land-use plan. In Delaware, the state has delegated land-use authority to the local governments. Any land-development activity must comply with comprehensive plans and meet all of the relevant codes and ordinances of local jurisdictions.”; that the purpose of the State Strategies on Spending was not to regulate land use; that to comply with Sussex County Comprehensive Plan, Scenic Manor will be limited to single-family dwelling on single lots and is permitted by right; that over 80 acres of the parcel will result in some form of open space as determined by the Zoning Ordinance and that is approximately 48% of the property; that the proposed development will comply with the allowable density for AR-1 which was determined by taking the 166 acres and deducting 20.19 acres of wetlands with results in the net acreage of 146.64 acres supporting the 319 lots; that Tidewater Utilities will provide water for domestic use and fire protection; that Tidewater Utilities water main would be extended to the site from Route 24; that Sussex County will provide sanitary sewer; that stormwater management systems will be designed and constructed in accordance with DNREC’s sediment and stormwater regulations; that wetland evaluation was performed by GeoTechnology Associates, Inc. and found that there are 20.19 acres of State regulated tidal wetlands located on the site adjacent to Arnell Creek on the east and Dormand Branch on the west; that several low lying areas were found in the farm fields and could qualify as non-tidal wetlands which are under the jurisdiction of the U. S. Army Corps. Of Engineers, (USACE); that these areas are where stormwater naturally drains and accumulates from stormwater runoff; that the Applicant had an on-site inspection by the USACE earlier this year and was advised that these areas are not jurisdictional non-tidal wetlands subject to regulation by the USACE under the Clean Water Act; that a revised wetland evaluation dated February 10, 2021 designates these areas as non-jurisdictional is included in the exhibit book; that the design of the development stormwater management plan is to maintain the natural drainage characteristics of the site and these low-lying areas would be incorporated into the stormwater management areas; that the Application was reviewed by State Agencies as part of the PLUS review process in August 2019; that according to the State Historic Preservation Office (SHPO) records there are three known archeological sites on this land and recommended an archeological survey of the area; that the Applicant retained Ed Otter of Ed Otter, Inc. to perform an archeological survey of the property that the fieldwork returned artifacts of both historic and prehistoric periods; that the location of all recovered artifacts were identified and mapped; that recovered artifacts were taken to the lab to be cleaned and cataloged and a copy of this report is included in the Exhibit Book; that a copy of this report was also sent to SHPO for their records; that the investigation found that there were no cemeteries or unmarked human burial sites located on the property; that DelDOT determined that a Traffic Impact Study (TIS) was required for the proposed development; that the Traffic Group performed the TIS and was submitted to DelDOT for review in April 2020; that DelDOT issued its TIS review letter on February 11, 2021 and a copy is included in the record; that DelDOT lists numerous onsite and offsite improvements and contributions that would be the responsibility of the Developer; that in October 2020 Sussex County and DelDOT signed an agreement called the Henlopen Transportation Improvement District (TID); that with the TID instead of just focusing on the immediate area of the Development it allows for a comprehensive approach to future traffic impact in the general area; that the Developer will pay a contribution fee for

traffic infrastructure improvements as determined by DelDOT and the County; that this ensures that the work happens as the Development happens and it equitably distributes the cost of the improvements among the Developers and other parties; that the Developer would remain responsible for site improvements and would pay a few per unit towards the roadway infrastructure improvements in the district; that as stated in the TID letter, the Developer will reconstruct Mulberry Knoll Road from Stardust Drive to the northerly limit of the subject property to meet DelDOT's local road standards which includes right of way dedication along the property frontage on both sides of the road to create a 30-foot right of way from center line and the construction of 11-foot travel lanes and 5-foot shoulders; that part of the roadway reconstruction will involve the realignment of a portion of the road to improve the angle of the existing curve and improve safety; that there will be a 15-foot wide permanent easement adjacent to the right of way with a 10-foot shared use path within the easement area; that a portion of some of these costs may be taken as a credit to the TID fee to be determined by DelDOT; that there will be three entrances to the Development two on the north and one on the south which will be constructed in accordance with DelDOT's requirements; that the Developer will pay a few in lieu of off-site homes and the fee is \$4,900 per unit so for Scenic Manor the cost would be approximately \$1,500,000; that it is anticipated that the fee will go towards current DelDOT projects in the TID; that the site will be served by Rehoboth Beach Fire District and is in the Cape Henlopen School District; that when planning the Development consideration was given to minimizing any environmental impact; that the 2019 Comprehensive Plan states that the Plan has two main characteristics; that the first is based on demand and evidenced by County Construction data and real estate prices the Coastal Area of the plan is the most desirable in the area for new housing and was designated as a growth area; that the second is that the Coastal Area contains natural habitat and features that are not only ecologically sensitive but are attractive and naturally beautiful and is a reason why the area is so desirable for residential use; that the goal of the Comprehensive Plan is to safeguard these areas and to mitigate the impact of development while supporting development as a positive effect on the real estate market and provides jobs and business opportunities for local residents and keep local property tax rates low; that Scenic Manor will incorporate the environmental protection requirements of the Zoning Ordinance in addition to other environment respectful features including a minimum 20-foot forested buffer adjacent to any land of other ownership bordering the property; that the portion of the property to be developed is located primarily on the non-wooded agricultural areas of the property; that the Department of the Interior – Fish and Wildlife Division determined that there are no threatened or endangered species on the site or any critical habitat on the property; that DNREC -Species, Conservation and Research Program stated there are no records of State rare or federally listed plants, animals or natural communities at this site and that there is one species of greatest conservation need that may occur at or adjacent to the parcel, the Eastern Tiger Salamander; that the Salamander's habitat is mixed woodlands with adequate wetlands and that species spends most of its life cycle underground; that DNREC recommended that tree clearing on this site be restricted to areas necessary for home building and infrastructure and that the Development not use vertical curbs; that forested wetlands on the site support potential for old growth forest which is "core wildlife habitat" which is defined as relatively intact natural ecosystems of high quality for native plants and animals; that many area residents have indicated that the American Kestrel has been seen on the property; that the Audubon Field Guide indicated that the Kestrels numbers have been declining in the Northeast in recent years but the Kestrel is the most common falcon in North America and its status is listed as stable; that the Development was designed to incorporate features that will respect the need for protection of the wildlife and for that goal all of the forested wetlands will remain undisturbed except for a kayak launch area; that there will be a 50-foot buffer from tidal wetlands and no lots will encroach in the buffer area; that the site has approximately 29 acres of woodlands and

21 acres of woodlands will remain which is over 70% of the existing woodlands on the site; that the landscaping on site will utilize native Delaware plants and trees; that there will be no impact on ground water and no on site wells for irrigation or other purposes; that grading will be completed to raise roadways above base flood elevation; that the wet ponds will be built oversize to accommodate unusual storm events and should improve the quality of discharge stormwater from the site; that the net density will be 2.71 lots per acre; that the average lot size will be 9,016 square feet; that the streets will be private with sidewalks on both sides with rolled curves and non-intrusive street lighting; that a school bus stop will be coordinated with the school district; that there will be clustered mailboxes located throughout the Development; that the community recreational area located in the larger eastern portion of the site will include a clubhouse with a minimum of 3,000 square feet, an outdoor swimming pool, a tot lot and other recreational areas; that subject to permitting approval a kayak launching and storage area is proposed at a location adjacent to Arnell Creek, there would be no launching of motorized boats; that there will be several gathering areas or pocket parks on community open space; that there will be an additional tot lot on the smaller western portion of the site; that the clubhouse and pool be required to be open for use prior to the issuance of the 140th residential unit building permit; that a Homeowners Association will be established; that it is anticipated that the Development would be constructed in approximately six phases of 50 lots each with a 6 – 8 year build out; that as the courts of Delaware states the decision of the Planning and Zoning Commission must be based and relate to the applicable statutory mandates; that the Best family has owned the property for 80 years and they have a reasonable right and anticipation to sell their property at a price reflective of the potential uses that are legally permitted by law and likewise the Applicant who has responsibly designed the development in a manner that meets or exceeds the statutory mandates that are found in the Subdivision Ordinance, the Zoning Code and the Comprehensive Plan has also earned and is entitled to approval; that proposed findings of fact have been submitted for the Commission's consideration.

Mr. Mears expressed concerns about the safety of pedestrians with all the amenities on one side of the road.

Mr. Fuqua stated that the Applicant is making road improvements and could request permission from DelDOT to install a crosswalk.

Ms. Wingate asked if the wooded area adjacent to Arnell Creek would remain undisturbed.

Mr. Fuqua stated that the wooded wetlands would remain undisturbed and adjacent to that will be a 50-foot buffer.

Ms. Stevenson asked if DNREC have visited the property and stated that she shared Mr. Mears concerns.

Mr. Fuqua stated that DNREC has not visited the site.

Ms. Stevenson asked Counsel if the Commission has required amenities on both sides of a development in the past.

Mr. Robinson stated that it has been done but he was unsure of how many lots on one side versus the other.

Ms. Stevenson stated that she remembers some that did not have to be the same but had to be of equal proportion on both sides.

Mr. Fuqua stated that there will be a tot lot and gathering areas on the smaller side, but it is not feasible to have a clubhouse and pool on both sides.

Ms. Stevenson asked if there is hunting in the area.

Mr. Fuqua stated that he did not know the answer.

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

The Commission found that Ms. Lisa Kiracofe spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Ms. Kiracofe stated that there is hunting in the area; that the development where she lives is adjacent to the farmland that MKR would like to develop; that many members of their community walk, jog and bike along Mulberry Knoll Road and have enjoyed the tranquility of this farmland and its wildlife; that the building of Scenic Manor will change this; that the group is not opposed to Scenic Manor but if it is approved there are serious concerns and requests for mitigation; that there are concerns about safety with all of the increased traffic and the response times for emergency vehicles; that there will be a loss of forests and unrecoverable loss of wetlands which will have an impact on the wildlife in the area in particular the American Kestrel; that flooding is a huge concern and the removal of wetlands will increase flooding on Mulberry Knoll Road; that the State in its response to the Service Level Request states that it does not support development in Level 4 areas and that they request that the development in the Level 4 area be removed and that the areas in Level 3 be designed with the maximum protection for the environment; that the State of Delaware also requests a 100-foot buffer to protect wetlands; that the Developer states that they will abide by Sussex County Code and provide a 50-foot buffer; that the Sussex County Code should align with the State Regulations especially in the environmentally sensitive Coastal Area; that they are asking the Developer to build responsibly to protect the environment; that the laws in Sussex County need to change to strike a balance between preservation and unmitigated growth.

The Commission found that Mr. Scott McClintock spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Mr. McClintock stated that he is a 15-year resident of Mulberry Knoll; that the average daily trips between Mulberry Knoll Road and Route 1 in 2019 was 19,988 trips per day; that Route 24 is one of the few major east/west connector roads for local and beach traffic; that the massive growth in residents and beachgoers the traffic is bumper to bumper; that the State of Delaware has designated Route 24 as a recreational route which carries heavier traffic in the summer months and is also designated as an evacuation route; that with the additional development on Route 24 will add an additional 10,188 cars per day and increase it by 50%; that the addition of Scenic Manor would bring an additional 3,043 cars per day; that emergency services will not be able to move if the roads are packed with cars; that these roads were not designed for all this traffic; that Mulberry Knoll Road is used for walking, biking and jogging and is a recreational road; that there was a proposed traffic light for Mulberry Knoll Road and Route 24 which was supposed to be installed in 2019 which has not been completed; that it can take 10 minutes to access Route 24 currently; that the Developer will make improvements to the road in front of their property but the remaining 0.75 mile up to Route 24 is in need of improvement also; that the second entrance to Scenic Manor is on the curve of Mulberry Knoll Road and is a safety concern and should be moved to the far northern end of the development; that the traffic light at Route 24 and Mulberry Knoll Road should be installed prior to any

new construction; that Mulberry Knoll Road should be improved from Stardust Road out to Route 24; and that these improvements should be a prerequisite to the approval of Scenic Manor.

The Commission found that Ms. Anna Biggs spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Ms. Biggs stated that there are many species animals and birds that are dependent on the undisturbed habitat of forest and field such as the American Box Turtle, the endangered Northern Harrier, Osprey, Fox, Bat, the endangered Tiger Salamander, many insects and moths, Bald Eagles, Owls, numerous birds and amphibians; that the most beautiful is the endangered American Kestrel which has been in decline since 1960 due to a loss of habitat as well as climate change and was listed as endangered in 2013; that a pair of kestrels have been seen in the forested area of the subject property and for the kestrel the combination of forest and farmland is crucial for survival; that the American Kestrel has seen a 93% decline since the 1960s and one of the main reasons for the decline is the loss of habitat due to residential development, climate change and pesticides; that the proper living conditions exist in the forest and farm fields on the subject property; that this site has been identified as a core wildlife habitat by the Delaware Ecological Network (DEN) and is high quality for plants and animals; and that prior to approval allow DNREC to conduct a survey to evaluate habitat and the site's potential to support the American Kestrel and additional species of concern.

The Commission found that Mr. John Seiffert spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Mr. Seiffert stated that he is not an expert in the subject of Wetlands and Hydric Soils but would like to define these terms for the Commission and the public; that wetlands collect and absorb rainwater and therefore limit stormwater runoff, they control erosion and protect water quality by filtering 80 to 90% of sediment and conduct denitrification before releasing them to the surrounding creeks and bay; these wetlands provide habitat for fish, birds and specialized plants that thrive in water saturated environments; that hydric soil is soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anerobic conditions in the upper part of the soils; that anerobic soils take many years to form a host of specialized plants that can tolerate the permanent or seasonal saturation; that hydric soils acts like a sponge and is a crucial element to alleviate flooding; that 10% of the total acreage is tidal wetlands and 5% ± of non-tidal wetlands on this property; that the perimeter of the property is where the majority of the wooded wetlands are located and are slated for removal; that the loss of these tree lined acres will cause more flooding, negate wetlands and increase the runoff and sediment to creeks and Rehoboth Bay and hydric soils are not conducive to building upon; that fill dirt will raise the topography of the site and increase flooding; and that prior to approval they request the Commission consider the negative impacts to the environment, specifically Arnell Creek and Love Creek that this proposed development will cause and support the State of Delaware recommendations in the PLUS report review dated August 6, 2019.

The Commission found that Mr. Scott Schoenfeld spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Mr. Schoenfeld stated that he would address flooding issues and not from the perspective of rain and high tides but from the wind-driven storm surge which piles into Love Creek and are absorbed by tidal wetlands; that if you fill wetlands, it will push the water elsewhere; that when these storms occur, the positioning of this site along the northwest corner of Rehoboth Bay, create a funneling area along Love Creek and into their development; that this area is almost a peninsula as it is surrounded by Arnell Creek on the west, and open to Rehoboth

Bay and Love Creek on the southeast, and Dormond's Branch. Mr. Schoenfeld referred to pictures which showed flooding on the subject property and in the Mulberry Knoll community; that the flood waters push all the way into Love Creek; that 96 of the proposed 319 lots, 6 portions of the roads and half of the clubhouse are within the 100-year floodplain; that if fill is allowed the additional soil will reduce absorption in filled-areas and redirect water back to Love Creek and Dormon's Branch increasing the flooding to adjacent properties; that fill should not be allowed as flood mitigation; and that homes should not be built in the floodplain.

Mr. Wheatley explained that filling of wetlands is illegal and is not being proposed; that the law states that you cannot run water onto a neighboring site; that when a site is developed the stormwater has to be contained on the site or lose it on the site in a manner to what is happening prior to development.

Mr. Chris Flathers, Morris & Ritchie Associates stated that the Developer plans to have a balanced site to minimize the import or export of soil; that they will not be bringing soil to the site; that runoff from the site must be maintained and they not negatively impact adjacent parcels.

Mr. Mears stated that there are very few lots that are not in a floodplain and most of the coastal towns at least 50% of the property is in a flood zone and are still buildable.

The Commission found that Mr. Kenneth Berman spoke in opposition to the Application as part of an organized group of Mulberry Knoll Bayshore Hills Residents. Mr. Berman stated that he is an attorney but not a land use attorney; that this group knows that this Development will be built but mitigation needs to be provided; that there are many things that are permitted but are they prudent and wise; and that notice be taken of the concerns of the adjacent residents and credence be given to them.

The Commission found that Mr. Jeff Kietzmann representing the HOA of Old Landing Woods, spoke in opposition to the Application; that Old Landing Woods is adjacent to Mulberry Knoll on the other side of Arnell Creek; that they echo the previous speakers when it pertains to traffic, evacuation routes and public safety; that they are concerned about the increase of destructive flooding; that the stormwater from the proposed development will be released directly into Arnell Creek and will impact the homes in Old Landing Woods; that Mulberry Knoll is one of the few places that the American Kestrel can be found; that they request that the Development be scaled back to a smaller more exclusive community and the stormwater management facilities be moved further downstream nearer to the bay.

The following people spoke in person and by teleconference in opposition to the Application:

Judy Rose Siebert, Vince Pompo, Eul Lee, Nathan Kiracofe and MaryAnn Bell. The concerns raised were about the traffic and evacuation, lack of infrastructure, the safety issues, that the plan does not comply with County Ordinances, flooding, the effect on wildlife, overdevelopment in this area and that the waterlines be extended past the property to provide a fire hydrant for the neighborhood.

Ms. Stevenson said that she would like to hear from DNREC regarding the American Kestrel.

Mr. Fuqua stated that the Applicant contacted both U.S. Fish and Wildlife and DNREC and the American Kestrel was not mentioned and that most all the forested areas will remain undisturbed and be a habitat for wildlife.

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

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

In relation to Application 2019-29 Scenic Manor (F.K.A. Estates at Mulberry Knoll). Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:40 p.m.

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