

## **THE MINUTES OF THE REGULAR MEETING OF MAY 12, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, May 12, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of April 14, 2022, Planning and Zoning Commission meeting as circulated Motion carried 4 – 0

### **OTHER BUSINESS**

#### **Coastal Tide**

##### **Revised Final Site Plan**

This is a Revised Final Site Plan for the Coastal Tide multifamily complex for the addition of fifty-five (55) parking spaces and other site improvements. The Sussex County Council approved a Conditional Use (C/U 1845) for the site to allow the multifamily dwellings at their meeting of Tuesday, February 23, 2010, and this change was adopted through Ordinance No. 2106. Additionally, the Final Site Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, February 14, 2019. The property is located on the northeast side of Plantations Road (route 1D). The Revised Final Site Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Zoning District: MR (Medium Residential Zoning District). Tax Parcel 334-6.00-5.02. Staff are awaiting agency approvals.

Mr. Whitehouse stated the plan is a Revised Site Plan; that is before the Commission for final approval; that there is a separate application for a Conditional Use that will be presented before the Commission for the subject property and the current Revised Site Plan is only for parking requirements and garage structures.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Final Site Plan with final approval by staff upon the receipt of all agency approvals. Motion carried 3-0. Chairman Wheatley abstained.

#### **Patriots Glen Phase 2 Residential Planned Community (RPC)**

##### **Preliminary Site Plan**

This is a Preliminary Site Plan for the establishment of a one-hundred and twenty-eight (128) lot Residential Planned Community (RPC) to include private roads, a gazebo, and open space. It is further noted that the residents of Patriots Glen, Phase 2 shall have access to the community active recreation facilities provided within the previously approved Patriots Glen (Phase 1) Residential Planned

Community (RPC). At their meeting of Tuesday, April 20, 2021, the Sussex County Council approved a Change of Zone for the parcel through C/Z 1911 from Commercial Residential District (CR-1) and Medium Density Residential District (MR) to a Medium Density Residential District, Residential Planned Community (MR-RPC) and the change was adopted through Ordinance No. 2770. The property is located on the southeast side of John J. Williams Highway (Route 24), approximately 0.45-mile southwest of Oak Orchard Road with access on the north side of the previously approved and proposed Patriots Glen Residential Planned Community (RPC) via Constitution Way. The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 234-29.00-67.00. Zoning: MR-RPC (Medium Density Residential, Residential Planned Community). Staff are awaiting agency approvals.

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

Mr. Phillips stated that due to Patriots Glen Phase 2 being a Residential Planned Community (RPC) it would be required to return to the Commission for final approval.

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

**(S-21-30) EPE Real Estate Holdings, LLC**

Preliminary Site Plan

This is a Preliminary Site Plan for EPE Real Estate Holdings, LLC for the proposed addition of a one-story 9,500 square foot warehouse containing four (4) commercial units, associated parking, and other site improvements. The property is located on the east side of Johnson Road (S.C.R. 390). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial Zoning District). Tax Parcel: 533-18.00-9.06. Staff are awaiting agency approvals.

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

**(2017-20) Welches Pond (F.K.A. Fieldstone & the Grove at Love Creek)**

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for “The Thicket” for the construction of a community park space, with picnic tables, hammocks, benches, and other site improvements located within the existing Welches Pond Subdivision (2017-20). The property is located on the north side of Welches Way. The Final Subdivision Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, July 9<sup>th</sup>, 2020. The Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 334-12.00-16.08. Zoning: AR-1 (Agricultural Residential District) and GR (General Residential District). Staff are in receipt of all agency approvals; therefore, this plan can be considered for both preliminary and final approvals.

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

**(2017-02) Woodfield Preserve**

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the construction of amenity space, with picnic tables, outdoor grills, a fire pit, parking, and related improvements located within the existing Woodfield Preserve Subdivision (2017-02). The property is located on the south side of White Cedar Court. The Final Subdivision Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, October 13<sup>th</sup>, 2011. The Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 235-9.00-23.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, this plan can be considered for both preliminary and final approvals.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Amenities Plan as preliminary and final. Motion carried 4-0.

**(2021-04) Autumndale (F.K.A. Autumdale & Fairmont)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Autumndale (F.K.A. Fairmont) (2021-04) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On March 14<sup>th</sup>, 2022, staff received a formal request to amend Condition B, delete a portion of Condition I, and delete Condition K in its entirety. The Applicant requests that Condition B, requiring *“The Final Site Plan shall confirm that at least 50 acres of the site remain as open space, with existing woodlands being preserved as “Non-Disturbance Areas”, be amended to, “The Final Site Plan shall confirm that 50 acres, more or less, of the site remains as open space subject to final engineering.”* Additionally, the Applicant requests that a portion of Condition I, requiring *“A system of fully shielded and downward screened streetlighting be provided”, be deleted in its entirety. Lastly, the Applicant requests that Condition K, which states, “There shall be a pathway installed around the central pond”, be deleted in its entirety.* This AR-1 cluster subdivision proposes one-hundred and four (104) single-family lots on 73.905 acres +/- and is located on the south side of Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Rt. 5) and Hollyville Road. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District).

Ms. Stevenson requested clarification to the *“The Final Site Plan shall confirm that at least 50 acres of the site remain as open space, with existing woodlands being preserved as “Non-Disturbance Areas”, be amended to, “The Final Site Plan shall confirm that 50 acres, more or less, of the site, remains as open space subject to final engineering.”*; that she thought the preservation of existing woodlands being Non-Disturbance Areas” was proffered by the Applicant; that there are multiple applications where the same requests are being made; that she questioned if, *the Applicant requests that a portion of Condition I, requiring “A system of fully shielded and downward screened streetlighting be provided”, be deleted in its entirety”* is the Applicant’s request for no street lighting or is the Applicant requesting something different; *Lastly, the Applicant requests that Condition K, which states, “There shall be a pathway installed around the central pond”*

Mr. Robertson stated he had spoken to the Applicant’s representative in regard to the proposed issue; that there is a concern, as a project goes from the preliminary design stage to the final after all agency approval are obtained, the amount of open space may fluctuate some; that the Commission’s motions take the open space proposed on the Preliminary Site Plan making it a Condition of Approval; that historically, it has been a lesson learned by the Commission, as a certain amount of open space is proposed during the public hearing and change significantly when presented for final approval; that in respect to the open space request, he does not have any issues with the request as it still maintains the spirit of the condition’s intention; that as long as the open space is within the ballpark of the propose open space; that he cannot answer why the Applicant is requesting to delete the language regarding

existing woodlands being preserved as “Non-Disturbance areas” and is different than the acreage request; that he does not recall if the “Non-Disturbance Area” verbiage was proposed by the Applicant; that he cannot say for certain with the subject Application, but many times, if something is shown on a concept plan as being forested during the public hearing, the Commission will include the trees as part of the Conditions of Approval; that if a plan is originally promoted with trees, the Commission will require a condition to keep it that way; that he cannot confirm that is the current Application’s case; Mr. Whitehouse stated the Applicant has confirmed with Delaware Electric Coop (DEC) that “the fully shielded and downward screened streetlighting” is not available for purchase or installation within its communities, making compliance is impossible; that for that reason the Applicant has requested an amendment to Condition I, requesting the condition be deleted in its entirety.

Mr. Mears stated Delaware Electric Coop provides the lighting to the community and the Applicant is limited to the lighting Delaware Electric Coop.

Chairman Wheatley stated he, as well as the rest of the Commission, was having difficulty understanding why Delaware Electric Coop cannot supply a similar type of lighting that Delmarva Power can supply; that he would assume Delaware Electric Coop purchases their supplies from the same vendors; that it has been a standard condition of approval for several years; that this is the first time anyone has ever suggested there was not a way to meet the condition and he would like to see something provided by DEC explaining the reasoning the condition cannot be met.

Mr. Hopkins stated he has difficulty believing this is the first time Delaware Electric Coop has been requested to provide that type of lighting and he questioned if the issue could be the fact the lighting may be called by a different name.

Ms. Stevenson stated she would like to speak with a representative from Delaware Electric Coop and she requested to take no action, allowing time to contact Delaware Electric Coop to obtain more information and possible lighting alternatives.

Mr. Hopkins questioned what lighting DEC is currently placing in developments that meet the current standards and he would like to know what other alternatives DEC offers; that he questioned if the original motion for open space was made at 50 acres and questioned if there was an idea of what the open space acreage is now proposed to be

Mr. Whitehouse advised the Commission the representative for the Applicant was present, should the Commission have any questions.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant; that she was not a representative for Delaware Electric Coop and could only speak to the response the developer, her client, received from DEC, which is the reason for the Applicant’s request to the Commission; that DEC stated they are not placing fully shielded and downward screen streetlighting specifically; that they are placing some other type of street lighting; that the representative of the developer, who specifically spoke with DEC was not present at the current public hearing; that the conversation between DEC and the developer’s representative confirmed the requested lighting is not available and cannot be installed; that the Applicant can therefore not comply with the Condition of Approval; that she suggested, instead of being deleted entirely, perhaps the condition could be amended to delete the specific language; that the Applicant’s request regarding the open space was for the reasoning Mr. Robertson offered; that there can be variations in open space from preliminary to final, with respect to the final engineering of the project, the open space provided can be slightly less; that it stated on all proposed preliminary plans, that the numbers are subject to final engineering; that they request to have the verbiage adopted in the

conditions as well; that she sees no issue with keeping “*with existing woodlands being preserved as “Non-Disturbance Areas”*” back to the end of the sentence; that the total proposed acreage was 73.905 acres; that the plan proposed 104 lots with 50 acres of open space; that the proposed plan is for a cluster subdivision; that they understand the Comprehensive Plan encourages preservation of open space; that the intention is to keep the open space as close to 50 acres as possible; that the request is to add the language more or less and subject the final open space to final engineering, as there can be changes Ms. Stevenson questioned if there was a legal term defining “more or less.”

Mr. Robertson stated it is a term used in legal descriptions and surveys; that the Preliminary Site Plan is required to be substantially the same as the Final Site Plan and if the Final Site Plan were to be submitted being drastically different, the plan would be required to go before the Commission before final approval could be given.

Ms. Stevenson stated the last request was regarding the pathway around the central pond; that she did not believe the Commission required the pathway to be a sidewalk; that she believes the Commission required a pathway; that she does not care if the pathway were to be made of pebbles and she does want the pathway shown on the Final Site Plan, allowing for the future residents to know a pathway will be placed there.

Mr. Robertson stated he disagreed with one of the statements provided; that the question to whether or not the Commission has the authority to require installation of a pathway around stormwater ponds in Autumdale; that he requested Mr. Whitehouse display the Preliminary Site Plan for 2021-04 Autumdale; that there was a pathway shown on the Preliminary Site Plan; that if something is proffered and shown on the Preliminary Site Plan it provides the authority for the Commission to place it as a Condition of Approval; that Section 99-10 of the Subdivision Code confirms that authority; that the Final Site Plan must be substantially the same as the Preliminary Site Plan; that the Commission is often proffered amenity packages, examples being, swimming pools, tree preservation, sidewalks; that if these things are proffered, they will be made a Condition of Approval; that otherwise, the amenities will not be shown on the Final Site Plan and Chairman Wheatley and he recalled previous circumstances where it was stated, if an amenity was not placed as a Conditional of Approval, the Commission cannot require the amenity be placed.

Ms. Stevenson stated she could not recall if the walkway went completely around the pond; that she believes the Commission requested the walkway be placed completely around the pond; that this area is being offered as open space; that if this area is being placed in an area residents cannot access, the area is not considered open space; that stormwater management ponds are expensive to take care of; that she is on the pond committee for her neighborhood; that she knows how much is spent on the stormwater ponds annually; that she feels if residents are paying for the stormwater pond, they should be able to walk around it; that if the pathway is proffered, from the beginning, when people purchase their lots, the developer cannot act like they do not have a clue.

Chairman Wheatley questioned what hardship was presented and if there was a reason given as to why the Applicant requested to remove the proffered pathway.

Ms. Stevenson stated she remembered Mr. Jason Palkowitz stating people do not like having walking paths in their back yard and the area does not belong to the back yards as it is the open space for the entire community.

Mr. Whitehouse stated within the second paragraph on page three of the letter requesting to amend the Conditions of Approval, speaking to the issue previously mentioned by Ms. Stevenson and the paragraph

stated the Developer had received significant negative feedback from customers related to privacy issues with pathways installed around the stormwater pond.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action to the request to amend the Conditions of Approval for 2021-04 Autumndale (F.K.A. Autumdale & Fairmont) to allow receipt of additional information from Delaware Electric Coop. Motion carried 4-0.

**(2021-05) Turnberry (F.K.A. Unity Branch)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Turnberry (F.K.A. Unity Branch) (2021-05) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On March 14<sup>th</sup>, 2022, staff received a formal request to amend Condition B and Condition H of the Plan's approval. The Applicant requests that Condition B, requiring, "*The Final Site Plan shall confirm that at least 65% of the site remains as open space*", be amended to, "*The Final Site Plan shall confirm that at least 65%, more or less, of the site remains as open space subject to final engineering.*" Additionally, the Applicant requests that a portion of Condition H, requiring, "*A system of fully shielded and downward screened streetlighting be provided*", be deleted in its entirety. This AR-1 cluster subdivision proposes one-hundred and ninety-six (196) single-family lots on 135.524 acres +/- and is located on the east and southeast side of Hollyville Road, approximately 0.8 miles south of Hurdle Ditch Road (S.C.R. 290). Tax Parcels: 234-16.00-1.01, 1.02, 3.00, 4.00 and 5.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action to request to amend the Conditions of Approval for 2021-05 Turnberry (F.K.A. Unity Branch) to allow receipt of additional information from Delaware Electric Coop. Motion carried 4-0.

**(2021-11) Lightship Cove (F.K.A. Fisher Road)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Preliminary Subdivision Plan for Lightship Cove (F.K.A. Fisher Road) (2021-11) as approved by the Planning and Zoning commission at their meeting of Thursday, December 9, 2021. On March 14<sup>th</sup>, 2022, staff received a formal request to amend Conditions B, H, and J of the Plan's approval. The Applicant requests that Condition B, requiring "*The Final Site Plan shall confirm that at least 54% of the site remains as open space,*" be amended to, "*The Final Site Plan shall confirm that 54%, more or less, of the site remains as open space with 7.5 acres more or less of existing woodlands, subject to final engineering.*" Additionally, the Applicant requests that a portion of Condition H, requiring, "*A system of fully shielded and downward screened streetlighting be provided,*" be deleted in its entirety. Lastly, the Applicant is requesting that Condition J, which states, "*There shall be a pathway installed around the central pond,*" be deleted in its entirety. This AR-1 cluster subdivision proposes ninety-seven (97) single-family lots on 48.93 acres +/- and is located on the south side of Fisher Road (S.C.R. 262). Tax Parcel: 334-10.00-69.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Chase Phillips advised the Commission that on the Preliminary Site Plan there is a central stormwater management pond with a proposed pathway completely around the pond.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action the request to amend the Conditions of Approval for 2021-11 Lightship Cove (F.K.A. Fisher Road) to allow the receipt of additional information from Delaware Electric Coop. Motion carried 4-0.

**(2021-12) Miralon (F.K.A. Cool Spring)**

### Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Miralon (F.K.A. Cool Spring) (2021-12) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On March 14<sup>th</sup>, 2022, staff received a formal request to amend Condition B, Condition E, Condition H, Condition I, and Condition J of the Plan's approval. The Applicant requests that Condition B, requiring "*The Final Site Plan shall confirm that at least 50% of the site remains as open space*", be amended to "*The Final Site Plan shall confirm that at least 50%, more or less, of the site remains as open space subject to final engineering*", that Condition E be deleted in its entirety and replaced with "*As recommended by D.N.R.E.C., a forest assessment shall be conducted to determine if mature forest areas exist on site and to identify any mature trees,*" that a portion of Condition H, requiring "*A system of fully shielded and downward screened streetlighting shall also be provided*", be deleted in its entirety that Condition I requiring a pathway to be included around the ponds at the front of the subdivision, be deleted in its entirety or be amended to clarify which ponds the Commission requires the pathways to be installed around, and that a portion of Condition J, requiring "*Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 35<sup>th</sup> residential building permit,*" be amended to "*Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 86<sup>th</sup> residential building permit.*" This AR-1 cluster subdivision proposes one-hundred and forty-four (144) single-family lots on 72.02 acres +/- and is located on the northeast side of Cool Spring Road (S.C.R 290). Tax Parcels: 234-5.00-37.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse displayed the Preliminary Site Plan; that he stated the plan shows a pedestrian connection and shared-use path to the perimeter; that there was no walking trail shown around the stormwater management, Pond B; that there was no path shown within Open Space A; that there was a walking path shown connecting the areas nearest to Lot 56 and Lot 119 and there was not a path surround the stormwater management pond within that area.

Mr. Hopkins questioned if the Commission inserted the pathway Condition, based on something that was proposed and now the Applicant is requesting clarity on the Condition as it was made.

Mr. Robertson stated the Commission will need to review what was originally proffered as Conditions by the Applicant.

Mr. Hopkins stated there are 104 total units; that someone on the Commission felt the 35<sup>th</sup> building permit was the standard for the pool house; that he feels this requirement is a bit tight; that he questioned what the standard building permit number does the Commission typically require; that he questioned if a pool house was a long lead item; that the Commission needs to consider if there are long-lead items, the supplies are not waiting on the pool house, restricting the building of the homes.

Mr. Robertson stated the Commission typically requires what the Applicant proffers; that the Commission does have a standard if it is by default, which is typically around half; that more often than not the standard is suggested by the Applicant and the number does sound lower than what the Commission would normally request.

Mr. Whitehouse stated that there were Conditions of Approval proposed and that he did not believe the Applicant proffered the 35<sup>th</sup> building permit.

Chairman Wheatley stated he did not believe the Applicant proffered the number; that he feels the Commission came up with the number but was unsure how the Commission arrived at the number; that

he also felt the number sounded low and pool houses are typically a long lead item; that the Applicant is requesting the Commission bring the requirement in line with the percentages they have previously required, and he felt the request was reasonable.

Ms. Stevenson stated the project developer typically builds the amenities early in the project and she assumes the developer is requesting some breathing space.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action to the request to amend the Conditions of Approval for 2021-12 Miralon (F.K.A. Cool Spring). Motion carried 4-0.

### **Lands of Whitetail Lane, LLC**

Minor Subdivision off a 24-ft easement

This is a Minor Subdivision Plan for the subdivision of a 211.18 acre +/- parcel of land into one (1) lot and residual lands off a proposed 24-foot ingress/egress easement. Proposed Lot 1 consists of 6.8 acres +/- and the residual lands consist of 204.38 acres +/- . The property is located on the southeast side of Wood Branch Road (S.C.R. 321). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and may be approved as final by staff pending the receipt of all agency approvals. Tax Parcel: 135-20.00-137.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the minor subdivision off a 24-ft. easement with final approval by the staff upon the receipt of all agency approvals. Motion carried 4-0.

### OLD BUSINESS

### **C/U 2341 Caden Oplinger**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FARM TRACTOR AND TRUCK REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 20 ACRES, MORE OR LESS.** The property is lying on the southeast side of Shawnee Road (Route 36), approximately 0.23 miles south of Abbotts Pond Road (S.C.R. 620). 911 Address: N/A. Tax Parcel: 130-6.00-22.00.

The Commission discussed the Application, which had been deferred since April 28, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2341 Caden Oplinger for a farm tractor and repair business based on the record made during the public hearing and for the following reasons:

1. The proposed repair facility is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or community. It is also small enough that it will not negatively impact traffic or nearby roadways.
2. The location is mostly surrounded by farms and other large tracts of land. The Applicant lives behind the site and his grandfather lives next door. The Applicant stated that none of the neighbors oppose his plans.
3. The proposed use provides a service to Sussex County farmers and small businesses in the area by providing a convenient location for diesel repair services for trucks and agricultural equipment.

4. The Applicant proposes to use a 60-foot by 80-foot building for the business. This use, within the proposed workshop building, is very similar to the type of repair and maintenance work that a farmer would be permitted to do on his or her farm equipment under the existing AR-1 zoning.
5. No parties appeared in opposition to this Application.
6. The Applicant seeks a Conditional Use for the entire 20-acre parcel. The Applicant has stated that he only needs a Conditional Use for the front portion of the property where the proposed use will actually be located. As a result, this recommendation is to approve the Conditional Use for the entire front 350 feet of the property, which extends beyond the proposed workshop building with enough extra space for reasonable expansion and setbacks.
7. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The use shall be limited to repairs on trucks and farm equipment. There shall not be any retail sales occurring on the property.
  - B. The use shall be limited to the front 350 feet of the property. The Final Site Plan shall clearly depict this reduced area of the Conditional Use.
  - C. One lighted sign shall be permitted. It shall not be larger than 32 square feet per side.
  - D. Security lighting shall be shielded and downward screened so that it is directed away from neighboring properties and roadways.
  - E. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
  - F. All repairs shall occur indoors within the proposed building. No outside storage of parts or other materials associated with the use shall be permitted.
  - G. No junked, unregistered, or permanently inoperable vehicles, trucks or trailers shall be stored on the site.
  - H. There shall not be any parking in the front yard setback.
  - I. The parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Trucks and farm equipment shall only be parked within these designated areas.
  - J. All oils and other fluids shall be properly stored indoors in appropriate containers. The applicant shall also comply with all state and federal requirements for the disposal of these fluids.
  - K. The site shall be subject to DeDOT entrance and roadway requirements.
  - L. Any violation of these conditions may be grounds for termination of this Conditional Use.
  - M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2341 Caden Oplinger for the reasons and conditions stated in the Motion. Motion carried 4-0.

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

**C/Z 1933 Route 54 Limited Partnership**

**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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.62 ACRES, MORE OR LESS.**

The property is lying on the south side of Lighthouse Road (Route 54), approximately 0.39 mile east of Johnson Road (S.C.R. 390). 911 Address: 33006 Lighthouse Road, Selbyville. Tax Parcel: 533-18.00-59.00.

The Commission discussed the Application, which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1933 for Route 54 Limited Partnership for a Change in Zone from AR-1 Agricultural-Residential Zoning to C-2 “Medium Commercial” Zoning based on the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is located along Lighthouse Road, also known as Route 54. It is surrounded by other properties that are zoned C-1 General Commercial. This rezoning makes one connected block of commercial zoning in this area of Lighthouse Road.
3. C-2 Zoning at this location in the middle of the existing C-1 Zoning along Lighthouse Road will benefit nearby residents and visitors of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. This site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. No parties appeared in opposition to this rezoning application.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1933 Route 54 Limited Partnership for the reasons stated in the motion. Motion carried 4-0.

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

**C/Z 1934 Bunting Holdings, 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.18 ACRES, MORE OR LESS.**

The property is a landlocked parcel of land lying on the south side of Lighthouse Road (Route 54), approximately 0.39 mile east of Johnson Road (S.C.R. 390). 911 Address: N/A. Tax Parcel: 533-18.00-58.00.

The Commission discussed the Application which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1934 Bunting Holdings, LLC for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based on the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant's property is landlocked immediately west of the property fronting on Lighthouse Road (Route 54). With the exception of the property that is the subject of C/Z 1933 for C-2 Zoning, all of the property in this area along Lighthouse Road is zoned Commercial. This rezoning is consistent with the existing zoning in this area.
3. This property's only access is via the property this is the subject of C/Z 1933, which is under the same ownership or control as this property. As a result, it is appropriate for both properties to be uniformly zoned as C-2.
4. C-2 Zoning at this location along Lighthouse Road will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
5. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
6. This site is in the "Coastal Area" according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
7. No parties appeared in opposition to this rezoning application.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1934 Bunting Holdings, LLC for the reasons stated in the motion. Motion carried 4-0.

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

### **C/Z 1980 MARS-RE, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS.**

The property is lying on the south side of Atlantic Avenue (Route 26), approximately 475 ft. east of Powell Farm Road (S.C.R 365). 911 Address: 34464 Atlantic Avenue, Ocean View. Tax Parcel: 134-11.00-191.00  
Mr. Mears moved that the Commission recommend approval of C/Z 1980 for MARS-RE, LLC for a Change in Zone from AR-1 to C-3 "Heavy Commercial" based on the record made during the public hearing and for the following reasons:

The Commission discussed the Application which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1980 MARS-RE, LLC for a Change in Zone from AR-1 to C-3 "Heavy Commercial" based on the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.

2. This property is located along Route 26, which is considered to be a Major Collector roadway according to DelDOT's roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.
3. The parcel is in a section of Route 26 where there are commercial zones and business and commercial uses that have developed. This includes 6 commercial rezonings in the area since 2011. This location along this part of Route 26 is appropriate for this type of zoning, and it will not adversely affect the neighboring properties.
4. The site is served by central water and sewer.
5. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
6. C-3 Zoning at this location along Route 26 will provide convenient commercial services to visitors and residents of Sussex County.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to this rezoning application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1980 MARS-RE, LLC for the reasons stated in the motion. Motion carried 4-0.

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

**C/Z 1956 Jeffrey Behney**

**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 GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.546 ACRES, MORE OR LESS.**

The property is lying on the northeast of the intersection of E Line Road (S.C.R. 419) and Parker Road. 911 Address: 38531 Parker Road. Tax Parcel: 333-15.00-20.00.

The Commission discussed the Application which had been deferred since April 28, 2022.

Ms. Stevenson moved that the Commission recommend denial of C/Z 1956 Jeffrey Behney, 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 currently operates a permitted indoor shooting range at this location and desires to convert the zoning of the property to C-2. The C-2 Zoning is not necessary to continue the existing use as an indoor shooting range.
3. There is no other commercial zoning in the area, and the property is surrounded on one side by residential lots and on the other sides by farmland. This would be an improper standalone commercially zoned site in an area where no other business or commercial zoning exists.
4. Because the rezoning to C-2 is not consistent with the neighboring and adjacent low-intensity land uses it would have an adverse impact on the area.

5. If this property is rezoned to C-2, any of the uses that are permitted within the C-2 District could occur on this site, in addition to the current use as an indoor shooting range. C-2 Zoning and many of the uses permitted in that Zone are not appropriate in this location.
6. The site is in the “Low-Density Area” according to the Sussex County Land Use Plan and Future Land Use Map. The Land Use Plan states that the “Low-Density Area” should be the location where the primary uses are agricultural activities and homes. The Applicant has not established that the proposed rezoning is consistent with the Comprehensive Plan’s “Low-Density Area” designation for this property.
7. The Application seeks to rezone the entire 10.546-acre property to C-2 when only the front area of the property is currently developed with the indoor shooting range. Rezoning the entire property to C-2 is speculative and there is no basis in the record for doing so. This is particularly the case when there is no other commercial zoning in the area.
8. The proposed rezoning does not meet the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. For all of these reasons, the rezoning from AR-1 to C-2 for this property should be denied.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend denial of C/Z 1956 Jeffrey Behney for the reasons stated in the motion. Motion carried 4-0.

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

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM**

The Commission discussed the Ordinance, which was heard on April 28, 2022, and the record was left open until the current meeting to allow for receipt of additional written comments.

Mr. Whitehouse stated that seven additional documents and responses that had been received; that the correspondence was circulated to the Commission within the Paperless Packets; that there were additional comments received after the publication of the Paperless Packet; that those comments were printed and circulated to the Commission; that within the printed documents was a report received from Century Engineering; that there was some discussion during the public hearing regarding the number of parcels County wide could potentially, from a numerical point of view, benefit from the potential Ordinance; that Century Engineering provided a County wide analysis, that the majority of the document outlines the methodology applied within the analysis; that Century Engineering did use real-time data provided from the Planning & Zoning Department; that at the bottom of the second page, the report stated the total number of parcels that met the criteria established as part of the analysis is over 2,521 acres; that a one acre threshold was chosen due to the Ordinance’s buffer requirement; that they chose to exclude parcels of less than one acre; that County-wide, 612 potential parcels were found that fulfilled the requirements of the Ordinance; that the 612 parcels totals 6,291-acres; that he mentioned other multi-family housing examples within Sussex County; that not all of the existing multi-family housing examples currently offer affordable housing units within the program; that the offer examples show the ability to offer the proposed number of stories, the number of units and the amount of open space; that Beach Plum Dunes currently has a density of 3.25 dwelling units to the acre, which equals 144 units; that staff requested attention be drawn to the open space of 89%; that

the Ordinance requirements are physically capable to being achieved currently in projects that are or have already been built; that Costal Tide offers 168 units on 18.33 acres; that Costal Tide was able to deliver 63% open space with a density of 9.17 dwelling units to the acre; that all of the current examples are compliant with the 42-ft. maximum height requirement; that Weston Willows is a three-story building, which still complied with the 42-ft. maximum building height; that Weston Willows offered 287 units, with a density of approximately 10.65 dwelling units to the acre; that Weston Willows was still able to deliver 48% open space for the project; that the final example was Sea Glass, which is a four story building with a flat roof design; that Sea Glass also complied with the 42-ft. maximum building height requirement; that Sea Glass offered 224 units on 18.75 acres; that this offered an approximate density of 11.94 dwelling units to the acre and these examples show, even at below 12 dwelling units to the acre, the deliverable percentages of open space are in the region of 50% or more.

Mr. Robertson stated that there were a couple of variables to mention; that the Commission is somewhat seeing the proposed Ordinance for the first time; that County Council has been discussing the issue for some time; that the examples shown were information staff had when heading into the County Council presentations; that there area some notable differences; that the buildings of Beach Plum Dunes are 42-ft. in height; that the Ordinance proposes 52-ft., which would allow for another story; that the addition of another story would increase the ability to have more affordable units and greater density; that the threshold for open space within the Ordinance is 50% and the open space offered in Beach Plum Dunes is 89%.

Chairman Wheatley reminded the Commission, that due to not having a full Commission, and without having any serious pressure to vote, the Commission is not obligated to vote; that he did feel it would be good if all five Commissioners had the opportunity to vote and the Commission is welcome to have a discussion.

Mr. Hopkins stated the issue is similar to taking a drink from a fire hydrant; that all the information received as been good information; that the Workforce Housing issue is such a large issue for Sussex County; that he recalled the LSA report stated the approximate total workers within Sussex County was 8,000 workers; that the AMI, at the time, was about \$50,000 annually per worker; that the Commission is trying to help people find homes, allowing them to serve in all the capacities Sussex County needs; that he wished the Commission had the opportunity to be involved in workshops related to the Ordinance; that he views the Ordinance as one solution; that he feels the Commission needs to be unfolding multiple solutions; that he feels the Ordinance is concentrated to locations where the highest dollar amount of land is; that the bulk of the potential locations are within the Coastal Area; that the evaluation discussed multiple different analysis which were made; that the Ordinance made the most sense on areas closest to the shore; that he feels the Ordinance may be good for the three categories mentioned in the Ordinance; that he stated Sussex County also needs workforce housing within the Georgetown area and beyond; that in order for the numbers to work, the Commission must go back to consider density; that it is difficult to attempt to figure everything out on a Thursday evening; that the Ordinance is an amendment to the original Ordinance written in 2008; that the Ordinance was amended in 2016; that no one seemed interested in the previous Ordinances; that County Council has been involved and discussing the issue the past two and a half years; that he counted the items and lines deleted and added from the original Ordinance; that there were about 26 items deleted and 16 items added for the proposed Ordinance; that he does believe the Ordinance will work in the growth areas; that he feels there should be another option, in the other areas, as staff looks at areas further west; that he believes the report reflects the requirement to increase density when

moving further west, to allow projects to work and he feels they could do better; that he questioned how many of the 612 parcels are ten acres or more and he requested this numerical data be presented at the next scheduled meeting.

Mr. Whitehouse stated to achieve the number of how many of the 612 parcels are ten acres or more, would require additional math and calculation; that he could provide the information by the next scheduled meeting, and he requested the Commission leave the record open allowing for the receipt of the data information requested in relation to parcel distribution.

Mr. Robertson stated within the past two and a half years, the COVID-19 pandemic stopped everything for a while; that the Commission and County Council were not permitted to have meetings in person to allow discussion; that over the past two and a half years, the Coastal Tide project was being put to use; that Coastal Tide offered real-time education about the SCRP Program and how the program was working or not working; that staff utilized information learned from experiencing a project in real-time; that this offered opportunities to see issues which needed to be fixed and Chapter 72; that they spent a lot of time reviewing the LSA report; that they spent a lot of time to ensure a project would be feasible with the Ordinance requirements and the few changed lines was not the cause of the delay.

Chairman Wheatley stated Sussex County will have to do better with the workforce housing issue; that he believes the proposed Ordinance is not the end, but intended to be the beginning; that the Ordinance is one piece of a very large pie; that apartments and houses cost the same amount regardless of where they are built; that housing will cost the same in Seaford, as they would in Rehoboth; that the variable cost for developers is the land; that the construction cost is the same; that the land cost will not come down to the point it will cause a large disparity, due to the construction costs being fixed; that in order to offer more reasonable rents in areas which are less desirable, the Commission may have to consider additional incentives on the western side of the County; that when it comes to specifics, he is still concerned about a 50-ft. setback versus a 100-ft. setback, as well as the 50% versus 30% of open space; that after the numerical data and project examples, he does recognize the 50% open space is achievable; that deferring action would allow the Commission time to digest the newly presented information; that he does agree the Ordinance needs to be advanced; that he stated the Commission should keep in mind, many projects are built upon multiple parcels which are purchased and combined into one parcel; that the data being presented is based on individual tax parcels; and he requested to know the distribution numbers, from one to five acre parcels, five to ten acre parcels, 10 to 20 acre parcels and 20+ acre parcels.

Mr. Hopkins requested the parcel distribution data include parcels of 20 to 30 acres and 30+ acre parcels as well.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action, holding the record open for the receipt of additional information requested to be provided from the Planning & Zoning staff. Motion carried 4-0.

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

#### PUBLIC HEARINGS

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

**2021-30 Independence (Phase 13)** – A cluster subdivision to divide 19.278 acres +/- across three (3) separate parcels into 37 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 side of Harmons Hill Road (S.C.R. 302), approximately 0.48-miles southeast of the intersection of Zoar Road (S.C.R. 48), Hollyville Road (S.C.R. 290), and Harmons Hill Road and is accessed within from Abigail Adams Drive within the Independence Subdivision. Tax Parcels: 234-16.00-7.01,7.07 & 7.08. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Exhibit Booklet, the Staff Review Letter, the Applicant's response to the Staff Review Letter, Preliminary Subdivision Plan, a copy of previous approvals for the property site, including the Notice of Decision for the approvals, Technical Advisory Committee (TAC) comments, which include comments from Sussex County Engineering, letters from the Department of Agriculture, the Division of Health, the Office of State Planning and the Delaware Fire Marshal Office, one comment letter and seven mail returns.

The Commission found that Mr. James Fuqua, Esq. spoke on behalf of the Application, 2021-30 Independence (Phase 13) and the Applicant, Sussex Group Partners, LLC; that also present were Mr. Tom Tipton and Mr. Ben Gordy on behalf of Applicant and Mr. Ring Lardner with Davis, Bowen and Friedel; that there was an exhibit book submitted for the record; that the exhibit booklet contained information about the Application including the Section 99-9C Report, Environmental Assessment and Public Facilities Report; that the Application is for a subdivision request for a 19.3 acre parcel of land; that the property is located on the northside of Harmons Hill Rd.; that a 36 single-family lot subdivision is proposed; that the subdivision is proposed as a Cluster Subdivision; that the original Application was for 37-lots; that the site has since been revised to 36-lots; that the property is located next to the existing Independence Development; that the proposed addition will be part of the existing development, being subject to all the rules and regulations of the existing Independence subdivision; that the Application will be called Phase 13 of Independence; that the Independence Subdivision has frontage and entrances located along Rt. 5 and Harmons Hill Rd.; that Independence contains 332.7 acres; that Independence was approved as a 455 single-family lot Cluster subdivision, with extensive recreational amenities and open space in January 2005; that to the best of his knowledge the AR-1 (Agricultural Residential) Cluster Subdivision was created by an amendment to the Zoning Ordinance in August of 2004; that previously Independence was called Indigo Run; that Indigo Run was one of the first, if not the first, AR-1 Cluster Subdivisions reviewed and approved; that of the 455-lots within Independence, all but four lots have homes constructed on them; that the homes have been sold; that the remaining four lots have homes under construction; that the subject 19.3-acre parcel was not part of the original Independence development site plan; that the 19.3 parcel was listed for sale; that after discussions with the Independence Homeowners Association, the Applicant determined purchasing the property was appropriate, being in the best interest of all the people involved, by developing the property as Phase 13 of Independence, rather than the property being developed by a third party as a separate subdivision being adjacent to Independence; that a separate subdivision could be inconsistent with the design and quality of the Independence community; that the proposed 36-lot addition will utilize the two existing entrances to Independence; that there is no new entrance being proposed; that there will be no access to a State maintained road; that the only change to the existing Independence Site Plan will be an internal street connecting from Abigail Adams Dr. to the proposed additional property; that the road will cross a small portion of open space between Lot 274 and Lot 275; that the road as been agreed to by the HOA; that there will be extensive landscaping provided to minimize any impacts to adjacent and nearby properties, both outside of the development and internally within Independence; that Phase 13 will contain 36-lots; that the land of Phase 13 has a proposed density of 1.86 lots per acre, being under the

two lot per acre provision; that the overall density of Independence, with the addition of Phase 13, will increase the density from 1.37 lots per acre to 1.39 lots per acre, still being under the two lot provision; that the existing utilities of the development would be extended to serve Phase 13; that utility services will be provided by Artesian Water Company, Artesian Waste Water Management, Sharp Energy and Delaware Electric Coop; that stormwater management will meet or exceed DNREC requirements; that there are no federal or state regulated wetlands on the site; that the property is not located within a Flood Zone; that there are no archeological or historical sites associated with the property; that the site is not located within an Excellent Groundwater Recharge Area or Wellhead Protection Area; that the streets within Phase 13 will be private, being part of the Independence communities common elements; that the site is located within the fire service area for the Millsboro Fire Company; that the Applicant will be responsible for any entrance modifications or roadway improvements that DelDOT may require due to the increase in lots; that Phase 13 will be included as part of the Independence subdivision; that the future residents will be members of the Independence HOA, being subject to all the benefits of the Independence development; that the Phase 13 residents will have access to the recreational facilities and the Phase 13 residents will also be responsible for the obligations, being the same as the other residents, including initial and periodic assessments of homeownership; that he submitted proposed conditions, being Condition A through Condition H; that Condition A and Condition B limited Phase 13 to 36 single-family lots, provide Phase 13 will be an addition to and considered part of Independence, subject to the original Conditions of Approval and Condition C through Condition H are some of the more standard Conditions placed by the Commission on other subdivisions.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a Principal and Professional Engineer with Davis, Bowen and Friedel, Inc. (DBF); that there is a proposed access off Abigail Adams Rd. through open space; that the developer is proposing enhanced landscaping in the area, as a screen to the existing lots in the area; that the existing landscape buffer will remain intact; that the lots will not become any closer than the existing lot and buffer lines; that this will ensure no lots are located back to back; that as the road enters the community it will be curbed and guttered, with sidewalks located on one side of the road; that the Road B will be head into a cul-de-sac; that Road A and Road C will head into an alternative cul-de-sacs in a "T" shape; that all three proposed cul-de-sacs are permitted per Sussex County standards and the Fire Marshal; that the cul-de-sacs offer different ways to offer fire protection and turn around abilities; that within the open space, located within the middle of the property, the developer is proposing a pathway; that the material of the pathway is still yet to be determined; that along the pathway there will be proposed benches, offering residents passive use; that stormwater management will be per DNREC's standards and regulations; that the proposed stormwater management location allows them to maintain the grades as feasible as possible; that there would be a 20-ft. landscape buffer along Lot 20 up to the cul-de-sac; that a 30-ft. landscape buffer is proposed along the eastern and western sides of the property and there is a 20-ft. landscape buffer proposed around the property of 234-16.00-7.02 belonging to Michelle M. Gappa and Louis R. Lampkin.

Ms. Stevenson stated she had seen an email, by a resident within Independence, requesting all construction traffic enter via a temporary access road, located off Harmon Hill Rd., and requested all construction material, concrete cleanouts, and debris be kept within Phase 13, not being transferred through the existing Independence development.

Mr. Fuqua stated that the proposed issue was discussed with the HOA and the developer; that it is the developer's intention to seek from DelDOT a construction entrance from Harmon Hill Rd.; that it would ensure all material and construction traffic stay within the Phase 13 property; that however, DelDOT must grant the construction entrance request; that he doubts DelDOT would deny the request, as Harmon Hill Rd. is not a highly traveled road; that should DelDOT deny the request, requiring the construction

traffic to use the internal road system, the developer has agreed to the responsibility to any repairs or road maintenance necessary due to the construction traffic.

Chairman Wheatley stated he would hope DeIDOT would be sensitive to the safety issue of the request; that he would hope, if the Application were approved, DeIDOT would allow access, even if it was required to go through a proposed lot to achieve the temporary construction entrance; that he stated the construction traffic should not be in the existing development and the Commission cannot require DeIDOT to do this, but the Commission can make a request to DeIDOT for it.

Mr. Fuqua stated his intention was not to imply the developer wishes to have construction traffic come through Independence, that he wanted to mention the developer does not currently have the right to come through a construction entrance until DeIDOT grants approval.

Ms. Stevenson stated it was written, that *all existing drainage issues within the current development be corrected before the end of summer 2022*; that the Commission can only review and condition the current Application; she cannot require issues located on another property and are part of a different subdivision application be fixed and she can only address drainage within the property of the proposed Independence (Phase 13).

Mr. Hopkins stated vehicles move fast down Harmon Hill Rd., especially coming around the corner and he questioned the distance from the edge of the property on the left side to the last lot if there were to be a construction entrance placed adjacent to the lots located on the right.

Mr. Lardner stated he did not have the dimensions with him at that time; that they are looking to have a construction entrance placed at the location of Lot 19 and Lot 20, as the stormwater management system would need to be installed; that he feels the location of a construction entrance at Lot 19 and Lot 20 is located far enough away from the curve and the existing entrance that DeIDOT would not object; that they will be applying for a construction entrance at that location and he cannot guarantee DeIDOT will approve an entrance at the proposed location.

The Commission found that Mr. Richard Muti spoke in relation to the Application; that he lives within the existing Independence community; that he spoke in quantified support provided the Commission impose three Conditions to the Application should it be approved; that many aspects of the Independence community are unfinished and a mess; that there is a large dump area off Andrew Jackson Rd.; that there is a severe erosion issue to the inlet of Stormwater Pond 4; that the erosion issue has been present for eight years; that there are other drainage issues and erosion areas which require attention; that the first condition he requested the Commission to impose was the Applicant must complete all remediations and improvements, which include final paving of roads to the standards of the Sussex County Public Works Department and the Sussex Conservation District before beginning construction for Independence (Phase 13); that this request would not come at any added cost to the developer, as the developer is required to construct the road anyway; that he requested this condition to avoid any further delays; that many, if not all, residents within Independence are retirees; that some residents are former military, teachers and public workers; that they moved to Independence for quietness; that they love their community; that they believe their developer has performed a good job developing the community; that the community does not want to suffer another three years of construction vehicles lumbering through the roads of Independence to access Independence (Phase 13); that three years could be 1/3<sup>rd</sup> of his remaining life in which he does not wish to live with the sound and dust the construction traffic creates; that he understood the Applicant intends to place an application requesting a construction entrance; that he is surprised the proposed construction road was not referenced on the submitted site plan; that he requested the Commission require the Applicant receive approval from DeIDOT for the

construction entrance; that the development stands to make the developer millions of dollars without the requirement to provide additional amenities; that he believes the requirement to have DelDOT's approval would increase the developer's due diligence exponentially; that the third condition he requested the Commission impose was to not open the connecting street to the existing Abigail Adams Dr. until a substantial portion of the proposed homes are occupied; that he does not know what the proportion should be; that his concern is he does not want to give contractors an excuse to use the existing road rather than the construction entrance and those were his request to the Commission.

The Commission found that Mr. Harvey Johnson spoke in opposition to the Application; that he lives within Independence at Lot 272; that the break in Abigail Adams Rd. is proposed at Lot 274; that he will be directly affected by the proposal; that when he purchased the lot, he was under the impression he was located on a quieter portion of Abigail Adams Rd.; that with the proposal for Abigail Adams Rd., every new resident for Independence (Phase 13) will be required to drive by his property; that the developer has made the request at a late time, which has surprised most of the homeowners of Independence; that he does want to echo the majority of the statements made by Mr. Richard Muti; that he stated the applause to the requested conditions provided by Mr. Muti indicated the degree of relationship, trust and confidence between the residents of the community and the developer; that he does not believe the developer takes any heed to comments offered from a homeowner; that he believes the Homeowners Association does their best to attempt to have the developer comply with the developers own requirements; that there have been eight years of known deficiencies in stormwater treatment, which are still not completed; that the developer would probably not construct these until the last hour; that the concern of the residents is that with the addition of Phase 13, it will allow the developer another two year period to continue to obfuscate, delay and defer completion of requirements within the community; that an example of this are the sidewalks which run in front of the houses, but have not been completed between a house and the corner where there is common area; that there are streets with deficiencies such as pot holes; that he questioned if there is damage to a vehicle, caused by a pot hole; would Schell Brothers be responsible or would it be the developer; that Schell Brothers and the homebuilder cannot figure out who is responsible for these types of situations; that on his property, he has water behind his home; that Schell, the builder, has addressed some of the swale issues to the side of his home; that behind his home is the developer; that he hoped the developer and the builder could communicate to solve the swale issues; that within the past week the Homeowners Association paid the \$400.00 to fix the pot hole issues; that the arguing between the developer and the builder goes on constantly; that he has little confidence in how hard the developer will try to achieve the construction entrance; that he guarantees the definition of enhanced landscaping for the Commission and the developer are two different definitions; that he questioned what the 30-ft. buffer is made of; that he questioned if it would consist of open field or would the buffer have trees; that there are residents who have gone to East Coast Garden Center to purchase their own trees in an attempt to create their own buffer; that if a person were to ride down Harmons Hill Rd. it would not be difficult to count the number of trees offered within the buffer; that the Commission is the only body who can enforce the requested conditions and hold the developer's feet to the fire; that despite the residents having voiced concern and requests, they will only be facilitated through action by the Commission; that he requested the Commission look at the issues raised; that he requested to know what the proposed Conditions of Approval were; that he questioned if the approval of the Independence (Phase 13) annex would extend the developers commitment

Mr. Robertson stated there is a specified tree density provided within the Sussex County Code regarding required buffers; that the Code defines the number of trees required and the type of trees required for every linear 100-ft. of provided buffers; that there should be an existing 20-ft. landscaped perimeter

buffer for the Independence development currently; that the Applicant mentioned incorporating the Conditions of Approval to the existing Independence development as Conditions of Approval for the Phase 13; that the Commission will need to review the existing conditions to ensure they become conditions for the proposed Independence (Phase 13); that the Application for Independence (Phase 13) is considered as a completely separate subdivision; that the existing Independence subdivision is made up of phases; that each phase of Independence is bonded with Sussex County; that typically there is bonding for roads, stormwater management and landscaping held with either Sussex County or Sussex Conservation District; that some of the issues mentioned are still under construction, being under Sussex County's authority and inspection; that there are bonds being held for the required work; that if the requirements are not completed by a certain time, Sussex County will require the work be completed or Sussex County will call the bond; that it is in all parties interests to get the work completed; that Mr. Hans Medlarz is the Director of Sussex County Engineering; that Mr. Medlarz has been good about staying on top of these types of issues; that there is a progression to these requirements; that an example being, one would not want to place top coat on the roads when construction vehicles are still using the roads, as they would destroy the roads, requiring the work to be redone; that previous requirements for the existing Independence development is all under its own umbrella; that if the proposed Application were to be approved, it would not extend any pre-existing deadlines or buy the developer anymore time; that if the proposed Application were to be approved, it would require its own bonding and having its own inspections; that although the project would be integrated into the existing Independence, from Sussex County's authority, review and inspection, the bonding would be separate to only Phase 13; that he cannot confirm where the Phase lines are located in relation to the issues mentioned for Independence; that he can confirm there are bonds held; that the release of bonds do require inspection; that he would suspect based on the concerns stated, Mr. Medlarz will be notified of the concerns and an inspection is likely to be issued.

Chairman Wheatley provided a copy of the Applicant's proposed Conditions of Approval to Mr. Johnson; that he stated the conditions provided are only proposed and will not become Conditions of Approval until the Commission confirm them as conditions.

Mr. Johnson requested a follow-up on any provided inspections, to notify the homeowners to confirm the attention being offered to the issues and he questioned if the issues with the bonds and construction within the existing Independence could be resolved before starting construction within Phase 13 or would construction run concurrently.

Mr. Robertson stated due to Independence (Phase 13) being addressed as a separate application, it can run concurrently with work being performed with the existing Independence community; that he stated he cannot guarantee the work will run concurrently due to the fact, Phase 13 will be annexed into the existing development; that there is some notion, if the Application is proposed to connect into a project, the existing project should offer some level of completion and he requires more details on the situation.

Mr. Johnson stated the issue goes back to the concern raised by Mr. Muti; that if Abigail Adams Rd. is opened, becoming part of a traffic pattern, he questioned how long it would take before Abigail Adams Rd. receives the final topcoat paving.

Chairman Wheatley stated he could not imagine the developer would delay topcoat paving due to construction within a separate development and the developer will be required to perform the topcoat paving at the appropriate time, based on the status of the Independence development.

Ms. Stevenson questioned Mr. Johnson as to what his concerns were with the traffic going near his lot.

Mr. Johnson stated he purchased his lot two years ago; that upon purchase it was his understanding the street was whole and there was no indication there was a proposed annex and with the proposed break in the road, every FedEx, UPS, and contractor traffic will be passing by his property, creating a new constant flow of traffic.

Ms. Stevenson stated she cannot control the flow of traffic but could offer conditions to adverse effects of the traffic.

The Commission found that Mr. Michael Creenan spoke in opposition to the Application; that he lives on Abigail Adams Dr.; that he agrees with everything that was previously mentioned; that he had an additional concern regarding the location of any proposed dump site; that he request a new dump site be located within Phase 13 and not be placed within the dump site existing currently within Independence; that the existing dump site has been an eyesore to the residents for some time; that if the material were to be dumped in the existing dump area, construction traffic will be required to utilize Abigail Adams Dr., Andrew Jackson Dr., Patrick Henry Dr. and throughout the entire community and the dump site is nasty.

Chairman Wheatley stated he felt Mr. Creenan's request could be accommodated.

The Commission found Ms. Patricia Nucatola spoke in opposition to the Application; that she lives on Patrick Henry Cr.; that her street has been deemed as part of Phase 8 for Independence; that Phase 8 of Independence also includes the traffic circle, Thomas Jefferson and the current entrance on Harmon Hill Rd.; that she has lived at the property for almost four years; that up until recently, there were many construction vehicles utilizing the street; that the residents have been told the top coating cannot be completed, due to the street, traffic circle and rear entrance to Harmon's Hill Rd. being part of Phase 8; that if the Commission does not require a separate construction entrance, the construction traffic will continue to use the existing entrance located on Harmon's Hill Rd.; that she questioned how many more years before her street would be paved; that residents were told by Mr. Hans Medlarz with Sussex County Public Works that the developer does have the option to pave only her street up to the stop sign, before the traffic circle; that the developer could leave the traffic circle for the existing Phase 8; that the issue has been going on for months now; that the developer would be required to keep the existing bond in place until all requirements are completed; that up until currently she had been told by the developer that they cannot or will not do the paving of only her street and if the Commission does not require a separate construction entrance, she will live there possibly up to eight years before her street receives top coating.

The Commission found that Mr. Bill Thompson spoke in opposition to the Application; that he lives on Patrick Henry Cr.; that he has been a resident for about one year; that he is also concerned about the necessity of a separate construction entrance, and he feels approval of the Application should someone be conditioned to the approval and placement of a separate construction entrance being in place.

The Commission found Ms. Rita Rose spoke in opposition to the Application; that she lives on Abigail Adams Rd.; that she is 78 years old; that some of the residents paid premiums as they were told there would be no construction or houses constructed across from their lots; that now, they have found out the premiums they paid, being \$10,000 to \$27,000, extra is being ignored; that the proposed Application is the reasons the residents have little confidence in Schell Brothers and Ocean Atlantic Companies; that the developer knew at the time they purchased their lots, that they had plans to purchase more property and add more lots; that the developer plans to achieve this by amending a contract, which was supposedly not able to be amended; that the residents have no confidence in those companies because they do not listen to the residents and do not care about the residents; that they have lied to the residents already;

that she does not know how many years she has left; that waiting years and years to see things completed, breaking promises they had made to residents, it is unacceptable; that their homes were supposed to be located in a peaceful, wonderful and safe community and it will no longer be what was expected.

The Commission found that Mr. Joseph Adamczyk spoke in opposition to the Application; that he lives on Abigail Adams Dr. within Independence; that he purchased his lot, Lot 275, specifically based on the location; that he did not purchase his property with the understanding it would become a corner lot, should the Application be approved; that he is located on the right side of the proposed entrance from Independence; that he agrees with the statement previously made by other residents; that he requested to emphasize the statements of Mr. Robertson; that the proposed Application is a separate entity; that if he understood correctly, the project would be required to have its own, separate, concrete washout site and dump site; that the proposed project would not be permitted to use the existing dump site within Independence; that the existing concrete washout site, has become a dump site; that the site has become a health and safety hazard; that residents have reported there have been rodents spotted within the area; that the area does have silt fencing, wire rolls, concrete culverts and everything but just a concrete washout site; that the dump site grows larger every day; that he urged the Commission to require a separate construction entrance, as well as a separate dump site be located on the property for Phase 13 and remediation and completion of all the previously mentioned issues before a new construction phase takes place.

The Commission found that Mr. John Black spoke in opposition to the Application; that he resides on Abigail Adams Dr.; that he did present the development plan provided to him at the time he purchased his property; that he purchased his property with the idea there would not be anything else placed in the area; that he requested the main entrance to the proposed project be at the location of the proposed construction entrance, with a road that leads into Abigail Adams Rd. and if the project is proposed to be a separate entity, he does not understand why the entrance cannot be provided elsewhere.

Ms. Stevenson questioned if the proposal was discussed with the Homeowners Association.

Chairman Wheatley questioned if the Homeowners Association had been turned over to the homeowners yet, requesting confirmation that there was a current HOA with officers, and he questioned if there was anyone present on behalf of the Homeowners Association.

The Commission found there was no one present on behalf of the Independence Homeowners Association.

Mr. Black stated he does not know what was discussed with the Homeowners Association, nor what the HOA stated they would accept; that all because the HOA stated acceptance, does not mean all the residents accept what is proposed and the trees installed for the buffer are skinny, spread out and does not offer much of a buffer.

The Commission found that Ms. Judith Medeiros spoke in opposition to the Application; that she lives on Patrick Henry Cr.; that when she moved in, she was under the impression she was the end of the Independence subdivision; that she was informed there would be one more stretch, the developer planned to build out; that she had no idea at the time, the addition would be as extensive as it currently is being proposed; that as the Applicant's representative stated, the proposed subdivision was not part of the original Independence plan; that she is concerned as the Independence amenities are already being taxed to the hilt; that she feels the new proposal for Independence (Phase 13) should not be a part of Independence, having their own set of amenities; that she is also concerned with the overdevelopment of Sussex County; that it seems Sussex County is losing its green space and agriculture right and left;

that with the subject Application, Sussex County is losing another farm and she is opposed to the whole subdivision Application.

The Commission found Ms. Jeanne Walsh spoke in opposition to the Application; that she lives on Zachary Taylor Ct.; that she has been a resident of Independence for 14 years and she questioned if the annexation will require natural gas or will the proposed project be included in the current agreement with Poore's Propane.

The Commission found Mr. Ben Gordy stated the current intention is to extend the propane and he is uncertain if natural gas has fully made its way to the area.

The Commission found Mr. Jerry Baker spoke in opposition to the Application; that he lives on Ethan Allen Ct.; that communication from the HOA has not been tip-top; that the residents of Independence have heard, *We will try, We will see if we can, and We have looked into it and we are not going to do it*; that what the Independence residents are requesting is for the developer to step up, to commit to what they said they would do and place the commitments in writing and placing commitments in writing would allow residents to have something to dispute, rather than everything being verbal.

The Commission found Mr. Lee Shorter and Mr. Rob Hawthorne spoke by teleconference with concerns about existing drainage issues, swale creation on lots located within the existing Independence development, concerns with the existing 20-ft. wide Abigail Adams Rd. and the ability for the existing road to withstand the proposed traffic increase.

Ms. Stevenson questioned how the proposed project would be designed to ensure no additional water or drainage issues would occur on the lots located on Abigail Adams Rd.

Mr. Lardner stated the proposed project is designed so that all of the water and drainage generated from the proposed project, will to the stormwater pond shown on the site plan; that he does not currently know all of the exact details; that they are still in the preliminary stages; that the stormwater management pond may infiltrate or the pond may discharge right away with permission; that the drainage will not back discharge into Independence; that the project will have its own stormwater management facilities and there will be no additional runoff into the existing community or Abigail Adams Dr.

Chairman Wheatley stated everyone on the Commission knows there are always extenuating circumstances, that he requested Mr. Gordy take heed to the comments and concerns provided within the public testimony and he requested Mr. Gordy ask whoever would be responsible, to make a good faith effort, attempting to address the issues as quickly as possible.

Mr. Gordy stated he would express the provided concerns to the appropriate people; that they wanted to wait until the majority of homes were constructed, to keep construction traffic off of the finished roads; that Independence consists of 12 phases; that they have completed the top-coat finish to 8 phases; that they have four phases left to complete with top-coat; that typically the road as-builts are completed after the fact; that after the punch lists, concrete and asphalt repairs and top-coat paving are completed, is when the as-built is done; that Independence is a swale community with driveway pipes; that there were a few earlier phases where the as-built identified the driveway piping needed to be adjusted; that Sussex County Engineering suggested performing the as-built beforehand; that they had a surveyor come out, who completed as-builts on the remaining four phases; that they are now looking at the driveway piping currently to assess if anything requires adjusting; that any adjustment to the piping would need to be done before the road is top-coated and finished and regardless of the outcome of the proposed Application, their intention is to complete the remaining work in Independence by the end of this year.

Chairman Wheatley requested Mr. Gordy communicate the information and updates he provided in a letter or email to the Independence Homeowners Association, allowing them to know what will be taking place and when it may take place; that the HOA would be able to pass the information along to the residents of Independence and he feels by doing this, it would go a long way in improving the relations.

Mr. Gordy stated he was under the impression they have provided this information to the Common Area Committee, who had been overseeing this issue and he stated he would make sure the HOA and Common Area Committee receive the stated information.

Mr. Hopkins questioned if Mr. Gordy understood the concern presented referencing the drainage issues and water in the swales; that he questioned an approximate time the issue will be resolved; that he questioned the area the residents previously referred to as the dump site within Independence; that he questioned when Mr. Gordy projected the area to be cleaned up; that he requested the roads be assessed and he requested the attempt to speed up the finishing of the roads.

Ms. Stevenson questioned how far along is the Applicant in conversations with DelDOT.

Chairman Wheatley stated the lack of conversations with DelDOT is not uncommon at the project's current stage; that he agreed a temporary construction entrance is necessary for the construction of the project and he stated without the construction entrance, it will cause a safety hazard and cause damage to the streets.

Mr. Gordy stated he did understand the issue the residents had expressed; that it is a rear yard swale; that they have had a surveyor measure and perform as-builts; that they originally intended to regrade the area, in the attempt to resolve the issue; that after meeting with the Sussex Conservation District, they requested to have Land Design, Inc., who was the original design engineer, become involved; that they had Land Design, Inc. assess the issue to provide options to what could be done; that they have now as-built everything; that they are now assessing how to solve the issue once and for all; that the issue is another item within the works; that he hopes to receive a plan within the next month or so; that currently it is not a great time to grow grass; that due to this, they may push the plan until the fall of this year; that the swales may need to be regraded; that he is unsure if the issue is the swale has been rutted up or if the issue was simple a bad design; that the area being referred to as a the dump site within Independence, is an area which is being used for construction debris while the remaining houses are being built; that once the remaining houses are completed, they intend to remove and clean up the debris; that they are fine if the Commission places a condition stating any future stockpile or dumping area is only located within the proposed Phase 13 project; that he believes the remaining four homes are within the final stages of completion; that he estimated within the next few months completion and clean up of the dump area should take place; that he will attempt to speed up the finishing of the roads; that they have not yet had any conversations with DelDOT; that as soon as there is some type of approval in place from the Commission, they will be able to submit an application to DelDOT for the temporary construction entrance; that they do have a few areas for the potential construction entrance and they also would prefer to have a temporary construction entrance.

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 2021-30 Independence (Phase 13). Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

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

**2021-33 Workman’s Crossing (Phase II)** – A standard subdivision to divide 7.66 acres +/- into 3 single-family lots to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County. The property is lying on the northeast side of Brittingham Road (S.C.R. 455), approximately 0.16 miles north of the intersection of Brittingham Road (S.C.R. 455) and Pepperbox Road (S.C.R. 66). Tax Parcel: 532-15.00-11.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Subdivision Plan, the Soil Feasibility Study, the Staff Review Letter, and a letter from Sussex County Engineering Department Utility Planning Division; that he stated, based on the Applicant’s Preliminary Subdivision Plan, the Applicant may require waivers from the topographic contour requirement for the final subdivision plan and also a waiver from the landscape buffer requirement; that a waiver request has not currently been received to confirm the waiver requests; that there have been zero comments received and zero mail returns received.

The Commission found Mr. Matthew Egan spoke on behalf of the Application; that he is a Managing Partner with Dunn Investments, LLC; that he apologized as his engineer could not be present for the public hearing; that he is present to show his support for the proposed subdivision to divide 7.66 acres into three single-family lots; that the property is located between Brittingham Rd. and Pepperbox Rd. and he did wish to request waivers from the topographic contour and landscape buffer requirements.

Mr. Mears stated the Commission will require a Road-Share Agreement to be put in place.

Mr. Robertson requested Mr. Whitehouse confirm what waivers were requested.

Mr. Whitehouse stated that based on what was shown on the Preliminary Site Plan, there were no buffers shown; that this would require a waiver from the forested landscape buffer requirement, and the plan, as shown, would also require a waiver from the topographic contour, bulk, area, and grading requirements.

The Commission found that Mr. Todd Armstrong spoke in opposition to the Application; that he lives on Lot 5 along Brittingham Rd.; that when he and his wife, along with the owners of Lot 3 and Lot 4, purchased the land from Ms. Michelle Kirk, they were told there was a stipulation stating their homes were required to be over 2,100 sq. ft.; that he and his other three neighbors had attempted to contact the developer to inquire about purchasing the land located behind their lots; that they all purchased their properties to get away from it all; that they desired to not have neighbors behind their properties; that he and his neighbors had made calls and left voicemails, but they never received any response; that within the last two months, the developer placed a double-wide mobile home on Lot 9; that since the double-wide had been placed, the home has been broken into twice; that Delaware State Police (DSP) has been out to the property; that the double-wide home seemed to be a magnet of trouble; that they noticed people riding by, looking at the double-wide home; that he stated one can tell when someone is viewing a home for the right reasons, as opposed to the wrong reasons; that they feel most people are viewing the home for the wrong reasons; that he was amazed at the fact no stipulation was made, requiring the developer to place a home over 2,100 sq. ft.; that the double-wide mobile home, placed on Lot 9 currently, is approximately 1,400 sq. ft. to 1,500 sq. ft.; that he and his neighbors agree, the double-wide mobile home will bring down their property values; that he and his neighbors agree the double-wide home seems to be an omen of trouble, based on the things that have previously occurred thus far; that currently no one has moved into the double-wide home as of yet; that at a previously public hearing before the Planning & Zoning Commission, the developer had taken one of their current neighbors aside, stating

they would show the neighbor plans of the homes the developer wished to build; that the developer had stated the homes would be comparable in size and would be stick-built homes; that based on what has been proposed so far, the developer has fallen very short of what was previously proposed and he questioned what buffering and/or fencing is proposed on the lots located behind him and his neighbors properties.

Chairman Wheatley stated the restrictions on the size of homes are deed restrictions; that deed restrictions do not have any correlation to the Sussex County Code; that deed restrictions are restrictions placed by a landowner placed on the land before it was sold; that he would assume there was a restriction within Mr. Armstrong's deed stating the requirement to the size of the home permitted on his property that it is possible a restriction may have been placed within Mr. Armstrong's deed, however, the restriction was not placed within another property's deed; that it becomes the sole discretion of the owner of the land and he stated Mr. Armstrong could place additional deed restrictions on his lot and if Mr. Armstrong were to sell it, the future property owner would then have to abide by the restrictions previously set by Mr. Armstrong.

Mr. Egan stated he would bring the concern regarding the square footage of the proposed homes to the other two partners to discuss; that he personally had no issues with proposing 2,100 sq. ft. as a required minimum; that he was the developer who previously spoke with the neighbors; that they had originally presented a six lot subdivision; that the plan has since been changed to become more friendly with water runoff and other issues; that they did offer to sell the lot behind all of the exiting lots; that the offer to sell currently still stands; that they were the previous owners to the other lots, which they had sold; that the properties are not currently deed-restricted; that they would be open to deed restricting the proposed properties at a 2,100 sq. ft. minimum requirement and he does not know the exact size of the double-wide mobile home, but he was originally told it was larger than what Mr. Armstrong stated.

The Commission found Ms. Lisa Armstrong spoke in opposition to the Application; that she is the wife of Mr. Todd Armstrong; that to her knowledge, no offer was made to her husband and herself, to purchase the property located behind them; that when they moved to Brittingham Rd. about a year and a half ago, they were advised all homes around them would be similar or comparable to what they had already constructed with Bay to Beach Builders; that she did present with photos of the existing home along Brittingham Rd.; that the existing homes are completely different than the double-wide mobile home located at the end of the street; that she, as well as her other two neighbors, were willing to purchase the land located behind their properties from the developer to ensure homes would not be built behind them; that her husband is from New York, and she is from Sussex County; that they purchased their property to get away from it all and to have no one around them; that currently the area is mostly farmland; that she wanted to reside in a location where her privacy could remain intact; that if the developer builds behind them, their property value will decrease, even with a placement of a privacy fence; that all of the existing homes are one to two story homes; that the existing homes range from 1,900 sq. ft. to 2,500 sq. ft. along Brittingham Rd.; that it is not only about their home, as they have already began construction on the other side of Brittingham Rd., which will be comparable to their home and every other home located on Brittingham Rd.; that the current double-wide mobile home is an eyesore to the community and what the community is trying to achieve on Brittingham Rd.; that even if the developer is not willing to sell the land, she would request the opportunity to provide the type of housing the residents on Brittingham Rd. would like to see in their community; that the developer never gave the existing residents that opportunity, nor was any attempt made to speak to or negotiate with them or their neighbors.

Chairman Wheatley stated he understood Ms. Armstrong's point; that he stated there is no obligation to the developer to contact the existing neighbors; that the Applicant has testified that they are willing to sell the land; that he encouraged Mr. and Mrs. Armstrong and Mr. Egan speak with each other at the conclusion of the public hearing; that he mentioned the deed for the property of the double-wide mobile home is of public record; that the deed can be reviewed for restrictions and if the deed stated restrictions were placed, the double-wide mobile home could be in violation of the restrictions.

Ms. Stevenson expressed concern about the request for a waiver of the landscape buffer requirement.

Chairman Wheatley stated he also has concerns about the waiver request; that he stated the Commission is not obligated to grant the waiver request; that another observation he made was the proposed lots are fairly large; that only one house is permitted per lot; that the developer is not permitted to place 10 to 12 homes on one property; that Sussex County Code does require a forested landscape buffer and the Commission will need to address the request for a waiver of the forested landscape buffer requirement.

Mr. Egan stated he would be happy to not request the waiver of the forested landscape buffer requirement.

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 2021-33 Workman's Crossing (Phase II). Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

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

### **C/U 2298 Freeman Solar, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT, A GR GENERAL RESIDENTIAL DISTRICT, AND A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 75 MEGAWATT SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 350.96 ACRES, MORE OR LESS.** The property is lying on the east and west side of Calhoun Road (S.C.R. 621) and South Shawnee Road (Route 36), approximately 1,267 feet south of Shawnee Road (Route 36). 911 Address: N/A. Tax Parcels: 130-3.00-246.00-247.00 & 247.02, 130-6.00-75.00, 76.00, 92.00, 94.00, 95.00, 96.00 & 97.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Site Plan, Exhibit Booklet, Staff Analysis, a letter from the Office of State Planning, a letter from DelDOT as part of the Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, one letter of support, which had been circulated to the Commission.

Mr. David Hutt, Esq., with Morris James, spoke on behalf of the Application; that also present were Mr. Mark Davidson with Pennoni, Mr. John Soinenen with Freeman Solar, LLC, Ms. Donna Calhoun, Mr. Donnie Calhoun; that Freeman Solar, LLC is a subsidiary of Brookfield Renewable US; that a safe, reliable and renewal production of electricity is a primary function of local, state and national government; that in 2021, Governor Carney signed Senate Bill 33 to raise Delaware's Renewable Portfolio Standard to 40% by 2035; that the Bill states by 2035 at least 40% of Delaware's electricity must come from renewable sources; that solar energy is a renewable source of energy; that addition to the governmental programs and mandates, commercial business are also making similar significant

pledges to shareholders and consumers, in the desire to modify their environmental footprint; that in 2021 Google committed to run all operations on carbon-free energy by 2030; that in order for Governmental agencies, commercial businesses and private individuals to accomplish those renewable source goals, applications much like the subject Application, are necessary under the Zoning Code to allow for those goals to be achieved; that over the past several years the Commission has seen several similar Applications for local utility level solar fields; that these past solar applications have ranged in size from 40-acres to 90-acres; that the current Application is for a transmission level facility on 350-acres; that the Application does consist of 10 tax parcels, which are located on both sides of Calhoun Rd.; that Calhoun Rd. parallels Rt. 113; that Ms. Donna Calhoun is one of the property owners of the 10-acres; that she lives along Rt. 113; that other members of the family reside within the proposed solar field itself; that Mr. Donnie Calhoun lives on the northern end of the proposed solar field; that the property has been farmed by the Calhoun Family for multiple generations; that the property is presently being farmed, as the total acreage is being used for agricultural use; that according to the Sussex County Zoning Map, there are six different zoning classifications within the area, being MR (Medium-Density Residential), C-1 (General Commercial), B-1 (Neighborhood Business), GR (General Residential), AR-1 (Agricultural Residential) and HI-1 (Heavy Industrial); that according to the Future Land Use Map, the majority of the property is shown in the Developing Area, which is listed as a growth area for Sussex County; that the Future Land Use Map also shows Low Density Area and Industrial Area, as well as the municipal boundaries of the City of Milford; that according to the City of Milford's Zoning map the property is in the vicinity to their C-3 (Highway Commercial District) and R-3 (Garden, Apartment and Townhouse District); that shown on the City of Milford's Future Land Use Map in the dark green color were areas that are proposed to be annexed into the municipal limits of the City of Milford; that much of the area is agriculturally used; that there are a number of residential uses in the area as well; that the subject property does back up to the Fitzgerald's Salvage Yard; that when traveling north from that site, there are residential homes, some of which belong to members of the Calhoun Family; that there is an electrical substation located on an adjacent property, being within the municipal boundaries of the City of Milford; that there is also a Delaware Solid Waste Authority Transfer Station in that area; that further north on Rt. 113 is the location and current construction of the Cypress Hall townhomes and apartments; that the Milford Grain Company is also adjacent to the property; that the northern part of the property is located along Shawnee Rd.; that according to the State Strategies Map, the 10 properties are located within Investment Level 2 and Level 3; that all the properties are located within Flood Zone X according to the FEMA Map, reflecting the properties to not be within a flood plain; that there are wetlands located on the property; that the wetlands are located to the north-western portion, middle portion along Rt. 113 and between the subject property and the Fitzgerald's Salvage Yard property; that all of the wetland areas have been delineated; that submitted within the project materials, is reference to the proposed 25-ft. setback from the panels from the wetland areas; that one of the positive features of a solar farm, is they do not tax the infrastructure of the County, or any other governmental entities; that the project does not require water or sewer services; that, other than when construction occurs, the site is rarely visited, other than for routine maintenance; that any water needs would be satisfied by the agricultural wells located on the site; that solar farms do not tax the traffic systems or road networks; that DelDOT described the traffic impact as diminutive, which stands for less than 50 vehicle trips per day; that on most days, the number of vehicle trips to and from the site will be zero; that the site will require very little grading; that the contractor will come in and install the solar arrays on the site as it currently is; that the gravel roadways, to access the each inverter station, may require some slight grading; that the gravel roadways are required by Sussex County Code; that the project is proposed to be a 75-megawatt facility; that the facility will produce 150,000 megawatt hours of energy per year; that the project will be comprised of 166,500 solar panels; that the solar panels are installed to withstand hurricane force

winds; that the arrays would be aligned in a way to track the sunlight throughout the day; that proposed are 25 inverters located on the site; that the inverters collect the solar energy; that there is a proposed substation located on the site, which will be adjacent to the substation located within the City of Milford; that the life of the solar project is a little greater than 20 years; the Freeman Solar, LLC has a long term lease in place with the Calhoun Family; that Freeman Solar, LLC is a subsidiary of Brookfield Renewable US; that Brookfield Renewable of the United States is the oldest and larger owner/operators of renewable energy producers within the United States; that Brookfield Renewables has projects which include hydroelectric projects, wind farms and solar farms; that as the operator of the site, they are responsible for all operations, insurance and similar issues; that they would also be responsible to decommission the site when the solar panels reach the end of their usefulness; that the decommission process consists of them coming to the property to remove the panels, infrastructure and wiring; that the farmland would then be handed back to the Calhoun Family to continue to use for agricultural purposes; that with respect to solar farms, the three general concerns are the impact on adjacent property values, sound issues generated by equipment and the visual appearance of the solar panels; that Freeman Solar, LLC did commission study from a nationwide firm, which performed a study regarding the impact of solar farms within various locations; that there is also a site specific supplemental report which references the potential impact of the solar farm located along Calhoun Rd.; that the conclusion of the 185 page report is that there is no consistent negative impact that has occurred to adjacent property, which could be attributed to the adjacent solar farm; that sunlight, nor the solar panel collecting the sunlight generate any sound; that there are invertors and transformers located on the site as part of the process which do generate noise; that there was a active sound study performed on the site by an engineering group; that the noise level, located directly next to the invertors themselves is 60 decibels; that 60 decibels can be compared to a normal conversational tone or a typical residential air compressor; that slightly further away from the invertors, the decibels drop to 45 decibels; that 45 decibels can be compared to a normal home appliance; that the project has been designed to ensure no residential uses located where there is more than 45.8 decibels; that the equipment operates during the daytime; that the noise from the inverters will only exist during the daylight hours; that there is no local sound ordinance within Sussex County; that DelDOT and DNREC do have noise ordinances as it is generated by industries and business; the when looking at their noise ordinance, it separates the day into two time periods; that daytime is referenced as 7:00 am to 10:00 pm; that nighttime is referenced as 10:00 pm to 7:00 am; that DelDOT's ordinance is in reference to residential uses that are adjacent to highways; that DNREC's ordinance is in reference to businesses adjacent to residential uses; that the Ordinance states 65 decibels cannot be exceeded at the residential use; that the proposed use of a solar field will easily comply with the Ordinance, as the solar field will generate 20 decibels lower than the Ordinance standard; that the nighttime standard for the Ordinance states noise must be lower than 55 decibels; that the solar field, even during the day, will remain 10 decibels lower than the nighttime standard; that generally a major concern for adjacent neighbors is the visual impact of the solar field; that the entire proposed area, pursuant to the National Electric Code, would be surrounded by a seven foot tall fence; that Freeman Solar, LLC proposes to screen in all locations adjacent to residential properties; that the screening will be made with a cross-section of vegetative plantings; that the vegetative plantings are approved by DelDOT to be located close to roadways; that the plantings are not tall-growing plants, as it would interfere with the access to sunlight; that the tallest planting is about 15-ft. in height; that 15-ft. is the maximum height of an installed solar panel; that he did show photo examples of what the plants would look like upon installation along Calhoun Rd., as well as, what the planting would look like after five years of growth; that the Applicant did send out an invitation to nearby properties, to help inform them about the proposed project; that the meeting was held the week before the public hearing; that what was proposed in the project booklet was slightly different than what was being proposed at the public

hearing; that the Applicant did go beyond Sussex County's 200-ft. radius around the properties; that the Applicant did invite a greater number of residents along the Calhoun Rd. corridor; that the Applicant has added landscape buffering to adjacent neighbors to the north of the site and neighbors located along Rt. 113; that they may offer a straight line of buffering behind Ms. Calhoun's house, rather than having the break in the buffering shown in the project booklet; that the Applicant is adding 2,600 linear feet of buffer to the project; that the visual impact of the solar field was the primary topic discussed that the meeting held by the Applicant; that the Application request is for a Conditional Use; that Conditional Uses are uses of a public or semi-public character, which are essential and desirable to the general convenience and welfare of Sussex County; that due to the nature of the proposed use, the importance of the relationship to the Comprehensive Plan and possible impact to neighboring properties and larger section of Sussex County, requires the planning judgement from the Commission on location, site plan and project conditions; that the proposed utility of renewable energy source is of public character; that the local, State, National and individual businesses are seeking these types of renewable energy sources, which makes the proposed project desirable and essential, when considering the mandates from the various governmental agencies; that within Chapter 7 of the Comprehensive Plan, it references utilities; that within Goal 7.3 it encourages the use of renewable energy options, such as solar farms; that this is also the reason why the State Planning Office responded, stating the facility will bring more renewable energy to Sussex County, having minimal land use and environmental impacts; that the proposed solar field accomplishes all of those things; that the proposed solar field is a renewable source of energy and complies with all governmental land use requirements; that the proposed solar field will have one of the most minimal impacts there can be on an area locally or regionally; that while the project benefits the environment, it has a very low impact on the environment; that when the project is finished, all of the infrastructure is recycled; that the property is then turned back into agricultural production; that within the project book, on the Property Value Impact Report, there was a watermark, which indicated the report was a work in progress; that he requested to submit the final version of the Property Value Impact Report, which no longer contained the watermark; that he did request to submit a proposed set of Findings of Fact and Proposed Conditions of Approval; that within the proposed Conditions of Approval, the made an attempt to tract the conditions placed for previous solar farm applications and one of the proposed conditions does contain the landscaping requirements, as it was a major concern to the adjacent neighbors.

The Commission found Mr. John Soininen with Brookfield Renewable U.S., spoke on behalf of the Application; that solar technology has been around since the 1950s; that solar technology is becoming more popular as it has become more cost effective; that in the 1950s the only people who could afford solar technology was NASA; that now solar technology is a very economically viable form of electrical generation; that the technology is simple; that sunlight is an energy wave; that the photons hit the polysilicon crystal cell, which creates an electric current; that the direct current is placed through an inverter, which converts the current to an alternating current; that the alternating current can then be used for the typical household uses; that the proposed use is essentially the same idea, just at a much higher level; that the project is proposed to be 75 megawatts; that the 75 megawatt facility will be broken down into 25 circuits; that each solar array will generate electricity in direct current; that the direct current would go through an inverter; that the inverter is about five feet wide, nine feet long and eight feet high; that the inverter will convert the direct current into alternating current; that the alternating current will go into a step-up transformer; that the step-up transformer will take the alternating current of approximately 680 volts to about 34,500 volts; that the step-up transformer will then go through the collector system and then into the project substation; that the project substation is a larger transformer; that the project substation will covert the 34,500 volts up to the transmission voltage to interconnect to the existing system at 115,000 volts; that off of the equipment is wired together by the Supervisory

Control and Data Acquisition System (SCADA System); that the SCADA System is the brains behind the solar panel system; that the SCADA System is wired into a remote operation system, which Brookfield Renewables U.S. controls; that everything is connected to a grid; that all of the electricity production and generation can be monitored remotely to ensure the system is operating properly; that the reason they are interested in the subject location is due to the existing infrastructure; that the farm use substation is operated by DPNL, which is the reason they are interested; that the subject site would allow them the ability to utilize the existing infrastructure; that this will allow them to connect, to produce energy and place the energy into the grid for wholesale and then broader consumption; that they have submitted an application in 2020 to the Regional Transmission Operator, PJM, which provided them a position in the PJM queue; that they have proceeded through the interconnection process; that the interconnection process is a multistep and multiyear process; that the project typically goes through three levels of studies being the Feasibility Study, a System Impact Study and a Facilities Study; that the Facilities Study is where the upgrades are designed to allow for interconnection; that if everything goes well, an Interconnection Agreement is received, which allows permission to place electricity into the wholesale system under very controlled circumstances; that they have been working through that process for a couple years; that they received the results of the System Impact Study in September 2021; that they then moved into the Facilities Study process; that they did sign an agreement to advance the Facilities Study; that they were informed they would receive feedback from the Facilities Study by May 2023; that subsequently, they have learned there are some issues and constraints within PJM; that PJM currently has a backlog, of 2,000 projects, across the network; that PJM is currently working through a queue reform process; that Freeman Solar, LLC is working in parallel paths; that the subject Application is slightly different than projects proposed in the past and currently developed; that they are not proposing to connect at a distribution system voltage; that they are proposing to connect at transmission voltage; that as a result of that proposal, the project would be regulated by the Federal Energy Regulatory Commission (FERC); that the FERC authorities then delegate down to PJM, who is the Regional Transmission Operator and they are working with PJM, but there are delays in the system, which has made the timing a bit unknown.

Mr. Hopkins stated he did visit the site and he felt it was the perfect spot for the proposed use.

Mr. Robertson questioned if the proposed conditions by the Applicant included the updated buffer requirements mentioned during the public hearing versus the landscaping buffers proffered within the Exhibit Booklet.

Mr. Hutt stated landscaping buffer revision was made based on the concerns and comments offered by adjacent neighbors during the Applicant's public meeting; that Condition E stated *the Applicant shall submit as part of the Final Site Plan, a Landscape Plan showing the proposed landscape design for the location of screening buffering shown on the Preliminary Site Plan during the public hearing.*

The Commission found that Ms. Donna Calhoun spoke in support of the Application; that she is the owner of Calhoun Ventures; that she was approached by Freeman Solar, LLC; that it has been very difficult for her brothers to make a living on farming the land; that she was very hesitant at first; that she had a lot of questions; that she and Freeman Solar, LLC worked together, working through all of her questions and concerns; that her biggest concern was what would happen when the project was finished in 20 years; that she is a believer in the proposed project; that with the recent price increase of gas and electric, as well as the damage being caused to the ecological system, she feels the proposed project will truly make a difference and the project is large enough it will be able to provide power for a lot of different uses.

The Commission found that Mr. Tom Collins spoke in relation to the Application; that he did not have any opposition to the proposed Application; that he wished to commend them for standing by their word provided at the public meeting the week prior; that he was one of the adjacent neighbors with concern to the landscape buffering; that at the time the landscape buffering was not in place; that at the meeting the Applicant stated they would look into remedying his concern; that he was present at the public hearing to ensure the Applicant did as they promised; that he believes they have provided a remedy for his concern; that he does not want the project to move forward unless the landscape buffer is mandatory and based on the revised plan shown, he no longer has opposition to the proposed Application.

Chairman Wheatley stated the project would not go forward if the proposed buffer were not placed.

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

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

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

In relation to Application C/U2298 Freeman Solar, LLC. Motion by Ms. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

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

**C/U 2363 Laurel Wesleyan Church – c/o Reverend M. Scott Conn**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 7.03 ACRES, MORE OR LESS.** The property is lying on the west side of Seaford Road (Rt. 13A), approximately 0.53 mile northwest of Discount Land Road (S.C.R. 468). 911 Address: 30186 Seaford Road, Laurel. Tax Parcel: 232-12.10-3.00

Mr. Whitehouse advised the Commission that submitted into the record was the Staff Analysis, plans, and photos submitted by the Applicant, the comments received from the Sussex County Engineering Department Utility Planning Division; the DelDOT Service Level Evaluation Response, and zero comments were received.

The Commission found that Reverend M. Scott Conn spoke on behalf of his Application; that also present was Ms. Kim Diehl with Kent Sign, Co.; that he is the Pastor at Laurel Wesleyan Church; that the current sign located on the property is 21 years old; that the sign has become aged; that they did consider replacing the sign with a similar style sign; that since technology has changed, he does wish to have an LED sign; that the upgrade to an LED would allow them to relay information better to events of the church; that Ms. Diehl was the designer of the proposed sign; that the proposed sign size is 84-in. wide and 96-in. tall; that the LED portion of the sign is proposed to be 31-in. tall and 81-in. wide; that electric is supplied to the proposed sign area and the sign would be controlled and programmed through WIFI.

Ms. Stevenson requested if the sign projects messages at night, the messages not be relayed with a bright white background, as it causes visual difficulty.

Mr. Hopkins questioned if the size of the sign would be subject to change and if the size of the sign is tentative, they should offer a footnote stating that.

Mr. Whitehouse questioned if the proposed sign would have an environmental sensor, or dimmer, which would reduce the brightness based on the amount of ambient light and he stated this is an Ordinance requirement.

Reverend Conn stated there may be some adjustment to the proposed sign; that the example proposed is a concept of what they would like for a LED sign; that the sign is not intended to be much larger, and he confirmed the sign would contain an environmental sensor which would dim the brightness at night.

Mr. Whitehouse questioned if the proposed sign would have an environmental sensor, or dimmer, which would reduce the brightness based on the amount of ambient light and he stated this is an Ordinance requirement.

Chairman Wheatley questioned Mr. Whitehouse if the sign would be required to have a sign permit; that the review process to obtain the sign permit will ensure the sign fully meets the County Code.

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

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

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

In relation to Application C/U 2363 Laurel Wesleyan Church – c/o Reverend M. Scott Conn. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion 4-0.

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

#### ADDITIONAL BUSINESS

Mr. Robertson stated he will be submitting the written submission for the Coral Lakes appeal, which is scheduled for May 24, 2022; that May 13, 2022, was the deadline and he would be submitting it, providing copies to the Commission; that he also questioned if previous open space conditions have ever been an issue in the past; that he stated he felt it seemed like a request to a problem that does not currently exist; that he questioned if the Sussex County Inspectors are looking to ensure the provided lighting is facing downward and shielded screened; that he questioned if the lighting requested in the conditions was ever an issue before; that it has been a standard condition and he questioned if applicants have been complying or if the requirement was not being checked properly.

Mr. Whitehouse stated there has never been an issue regarding open space in the past; that the issue has been showing the Limit of Disturbance; that the Planning & Zoning want to see where the Limit of Disturbance is located and be noted to the area remaining as a non-disturbance area and that portion of the request is the more significant part.

Mr. Hopkins stated he does respect the request; that if a provided open space is 1% or 1/10-acre off the proposed open space, the Applicant could have many departments of Sussex County coming down on them; that he would like to see drawings or cut sheets of lighting options and the objective of the

Commission is to ensure the lighting does not spread outward or upward.

Chairman Wheatley stated he has no issues with the request to provide a little flexibility with open space; that downward, shielded screened lighting is referred to as a shoebox, which surrounds the light with an opening at the bottom and he believes the Commission may be using the wrong term.

Mr. Mears questioned if Delmarva Power has access to downward-facing, shielded, and screened lighting, why would Delaware Electric Coop not have access to them.

Mr. Whitehouse stated staff would follow up on the questions regarding lighting in two weeks.

**Meeting adjourned at 8:45 p.m.**

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