

THE MINUTES OF THE REGULAR MEETING OF JUNE 22, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, June 22, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 - 0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the May 25, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 5-0.

PUBLIC COMMENT

The Commission found that three people were present in the room, and two people were present by teleconference who wished to provide public comment.

Mr. Michael Wolk, a resident of Millsboro, spoke against the termination of the teleconference line.

Mr. Jay Tomlinson, a resident of Lewes, spoke by teleconference against the termination of the teleconference line and to provide an appreciation for Ms. Stevenson’s service to Sussex County.

Mr. Jim Keresztury, a resident of Rehoboth, spoke by teleconference against the termination of the teleconference line.

The Commission found that Mr. Michael Bennett, the HOA General Manager for Americana Bayside, wished to provide comment on a current agenda item. Due to this, Chairman Wheatley denied Mr. Bennett from providing his comment.

OTHER BUSINESS

2021-15 Sandpiper Cover (F.K.A. Cobb Property)

Final Subdivision & Landscape Plan

This is a Final Subdivision and Landscape Plan for the establishment of a proposed cluster subdivision to divide 52.40 acres +/- into sixty-eight (68) single-family lots, private roads, open space, and proposed amenities, and the required 30-ft forested buffer to consist primarily of existing vegetation. At their meeting of Thursday, January 27, 2022, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the Subdivision subject to twenty-one (21) conditions. The properties are located on the northeast side of Zion Church Road (Route 20), approximately 0.5 miles northwest of Lighthouse Road (Route 54). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 533-12.00-21.00 & 21.03. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision and Landscape Plan as a final. Motion carried 5-0.

2022-15 Lands of Gator & Associates, LLC

Final Subdivision Plan

This is a Final Subdivision Plan for the establishment of a proposed standard subdivision to divide 28.48 acres +/- into four (4) single-family lots and residual lands. At their meeting of Thursday, April 20, 2023, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the Subdivision subject to four (4) conditions. The property is located on the north side of Burton Road (S.C.R. 241), approximately 1 mile west of Sand Hill Road (S.C.R. 319). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 235-19.00-7.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to approve the Final Subdivision Plan as final. Motion carried 5 -0.

S-22-26 What is Your Voice

Revised Preliminary & Final Site Plan

This is a Revised Preliminary and Final Site Plan for an office and four (4) storage units within existing structures on the site. The parcel is 0.49 acres +/- and is located on the southeast side of Shady Road (S.C.R. 276). The property is located within the Henlopen Transportation Improvement District (TID). Conditional Use No. 2261 was approved by Sussex County Council on Thursday, September 14th, 2021, through Ordinance No. 2800. The Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-6.00-515.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary & Final Site Plan. Motion carried 5-0.

S-23-20 Frederick Ford

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 3,325-square-foot service area addition, a 9,600-square-foot truck service building, and other site improvements. The parcel is 23.11 acres +/- and is located on the east side of Sussex Highway (Rt. 13). Staff would like to note that the subject parcel has been involved with auto sales since June of 1986, according to County permit records. The Applicant has submitted a waiver requesting that interconnectivity to adjoining commercial properties not be required. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 132-7.00-66.00. Zoning: C-1 (General Commercial) District. Staff are in receipt of all agency approvals and would like to request final by staff.

Mr. Whitehouse advised the Commission that the property is located within the Combined Highway Corridor Overlay Zone (CHCOZ); that the existing business does not comply with the buffer requirements for the CHCOZ; that the proposed building is an accessory structure to the existing businesses, being an expansion of the grandfathered site; that it is staff's perspective that the plan should go through the Board of Adjustment and then return to the Commission for review and approval.

In relation to S-23-20 Frederick Ford. The Commission took no action.

S-21-25 Cambria Hotel Amenities Site Plan

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the construction of a proposed 5,530 square-foot in-ground pool, outdoor bar, event space patio, and other site improvements. The parcel is 3.66 acres +/- and is located on the east side of Hood Road. The property is also located within the Henlopen Transportation Improvement District (TID). The Sussex County Planning & Zoning Commission originally granted approval of the Cabmria Hotel (S-21-25) Final Site Plan at their meeting of October 13th, 2021. The Preliminary Amenities Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-127.11. Zoning: CR-1 (Commercial Residential) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Hopkins and carried unanimously to approve the Preliminary Amenities Plan as a preliminary, with final approval to be by the staff subject to receipt of all agency approvals. Motion carried 5-0.

Lands of Dr. Burton Aronoff

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision for the subdivision of a 13.74 acre +/- parcel of land into four (4) lots plus the residual lands (referenced on the Plans as "Lot #5" with proposed access off a 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.989 acres +/-, proposed Lot 2 consists of 1.962 acres +/-, proposed Lot 3 consists of 2.347 acres +/-, proposed Lot 4 consists of 2.887 acres +/- and the residual lands (Lot #5) consists of 4.499 acres +/- . The property is located on the southeast side of Old Meadow Road (S.C.R. 530). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. A shared-use maintenance agreement will be established for the use of the shared drive. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 231-12.00-140.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Wingate and carried unanimously to approve the Minor Subdivision off a 50 ft. easement as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of David & Kelly Steele

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 4.05-acre +/- parcel of land into one (1) lot and the residual lands off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 0.50 acres +/- and the residual lands consist of 3.55 acres +/- . The property is located on the north side of Bookhammer Landing Road (S.C.R. 279B). The parcel is located within the Henlopen Transportation Improvement District (TID). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. A shared-use maintenance agreement will be established for the use of the shared drive. Zoning: MR (Medium Density Residential District). Tax Parcel: 234-12.00-176.00. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50 ft. easement with final to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Marroquin & Ponce-Hernandez

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 5.01-acre +/- parcel of land into three (3) lots and residual lands off a 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.0001

acres +/-, Proposed Lot 2 consists of 1.0001 acres +/-, Proposed Lot 3 consists of 1.7437 acres +/-, and the residual lands consist of 1.2678 acres +/- . The property is located on the north side of Hollis Road (S.C.R. 295). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. A shared-use maintenance agreement will be established for the use of the shared drive. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 135-16.00-43.18. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 50 ft. easement, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Robert & Candy Nibblett, Jr.

Lot Line Adjustment Plan & Minor Subdivision off a 30-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 1.40 acre +/- parcel of land into two (2) lots. Proposed Lot 1 consists of 0.75 acres +/- and proposed Lot 2 consists of 0.75 acres +/- . Also included in this proposal is a Lot Line Adjustment to relocate the existing lot line along Parcel 332.08 30-ft to the east with the existing driveway also to be relocated within the proposed 30-wide ingress/egress access easement. It should be noted that the property was the subject of BOA Case No. 11146 for a variance of 50 ft from the 150 ft lot width requirement for Parcels 332.07 and 332.08. The variance was approved by the Board of Adjustment at their meeting of Monday, January 28, 2013. The Minor Subdivision Plan otherwise complies with the Sussex County Zoning and Subdivision Codes. A shared-use maintenance agreement will be established for the use of the shared drive. The properties are located on the east side of Bethel Concord Road (S.C.R. 485). Zoning: GR (General Residential District). Tax Parcels: 132-2.00-332.07 & 332.08. Staff are awaiting agency approvals. The Applicant has been advised that, as the proposed lots are less than 1 acre, a Grading Plan will be required to be submitted prior to final approvals being rendered. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals to include a Grading Plan for the site.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Lot Line Adjustment Plan and Minor Subdivision off a 30 ft. easement. Motion carried 5-0.

C/Z 1393 Americana Bayside MR-RPC

Potential Discussion as to Director’s Determination as to Compliance with Conditions of Approval

This is an update on the recent Director’s Determination letter for Condition 17 of Change of Zone approval No. 1393 on February 6, 2001. The Planning & Zoning Department has received a request to confirm whether Condition No. 17 has been complied with. This condition requires “*The Applicant shall provide adequate security for the development. Security should include a 24-hour emergency center, sufficient staff, and vehicles with increasing staff to coincide with increased occupants for the project.*”

Mr. Whitehouse advised the Commission that staff had received a request from the Homeowners Association for Americana Bayside Residential Planned Community (RPC); that the original RPC was approved as C/Z 1393 in February 2001; that the letter requested clarification of Condition No. 17 of the Conditions of Approval; that he had prepared a memorandum summarizing the research and the findings; that Condition No. 17 requires “*The Applicant shall provide adequate security for the development. Security should include a 24-hour emergency center, sufficient staff, and vehicles with increasing staff to coincide with increased occupants for the project.*”; that the interpretation made by staff suggests that the condition does not dictate that the developer is required to provide a physical

building, as it only states that adequate security should be provided, and after receiving information from the developer regarding all of the security measures provided for the development, he is satisfied that the condition for security has been met through 24-hour security technology, rather than a physical building. Mr. Whitehouse requested the Commission's approval of his prepared Director's Determination Memorandum, before being issued.

Mr. Mears stated he felt the Developer had complied with the requirement of Condition No. 17, and approved the Director's determination and comments.

Ms. Stevenson stated the situation does cause the Commission to pause and give thought to the clarity of future conditions and that she approved the Director's determination and comments.

Chairman Wheatley stated he agreed with and approved of the Director's determination and comments.

Mr. Whitehouse advised the Commission that he would issue the Determination letter as prepared.

OLD BUSINESS

2021-23 Stillwater Harbor

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

The Commission discussed the Application which had been deferred since April 27, 2023.

Ms. Stevenson moved that the Commission deny 2021-23 Stillwater Harbor based on the County Code, the record made during the public hearing, and for the following reasons:

1. It is undisputed that this project is located in one of the most ecologically important areas of Sussex County. It is across River Road from Indian River, which according to our Comprehensive Plan has sensitive characteristics "which help to absorb floodwaters and provide extensive habitat for native flora and fauna. This area also has a significant impact upon water quality within the adjacent bays and inlets as well as upon the region's various habitats." One of the core objectives of the Future Land Use Element of our Plan is to "Protect critical natural resources, such as the Inland Bays and the others, by guarding against over-development...".
2. There are several primary concerns about this application, and each of them received a lot of attention. They include the impact of the subdivision upon the landscape and surrounding area, its access onto River Road and the conditions of that roadway, and the so-called "emergency access easement" proposed to utilize a private easement known as Jackson Draine Lane.
3. There was a lot of testimony in opposition to this application. While much of what was stated during the public hearing and in the written information is relevant, subdivisions are not "popularity contests". They have to be decided based upon the appropriate factors and the record before the Commission. In this case, the record does not support the approval of this particular subdivision.
4. Section 99-17B of the Sussex County Zoning Code states that "The access to the subdivision shall be from a public highway having a width of at least 50 feet, and the number and location

of access streets shall be controlled for traffic safety and protection of surrounding properties.” According to the Site Plan submitted by the Applicant, the width of the River Road Right of Way “varies”. The Applicant’s engineer testified that the existing right of way is currently only 42 feet to 46 feet wide at the proposed entrance to this development. This requirement of the Subdivision Code cannot be satisfied.

5. Section 99-9.C of the Sussex County Code states that “the approval of a subdivision shall include consideration of the following: . . . (11) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways” and “(15) Effect on area roadways and public transportation...”. As I will describe momentarily, I have considered these factors and others in Section 99-9.C and they support a denial of this subdivision.
6. It is undisputed that River Road floods in the general location of the proposed entrance to this subdivision. It is also undisputed that when it floods, River Road can be inaccessible for long periods of time.
 - a. This flooding and its effects of it were confirmed by the Indian River Fire Company’s various letters stating that the entranceway is located near “two significant areas of roadway tidal flooding on River Road which would preclude successful passage during these tidal conditions for these prospective property owners” within Stillwater Harbor.
 - b. This flooding and its effects were also confirmed in DNREC’s “Oak Orchard Coastal Drainage Engineering Evaluation” which is Exhibit 11 of the Applicant’s Exhibit Book. That Evaluation summarized the issue this way: “*Changes in development and the natural environment have intensified flooding issues for the community. In particular, residential and commercial areas have been built in the community over several decades, resulting in an increase in impervious areas and therefore an increase in flooding frequency from localized runoff for several of the areas. Residential properties and roads also flood regularly because of local runoff because of stormwater, drainage, and transportation infrastructure that is undersized or in disrepair.*” The Evaluation also states that, “*Drainage deficiencies included undersized or non-existent storm drain systems, storm drain systems that require maintenance, and low ground surface elevations. These deficiencies result in problems such as localized flooding, backwater flooding from the inland marsh, or coastal inundation directly from Indian River Bay.*”
 - c. The flooding and its effects of it were also referenced in Exhibit B of the DNREC Evaluation, which stated that River Road and Chief Road and the properties that are nearby “flood frequently (flooding observed during two days of fieldwork).” It states that the area west of the Chief Road intersection “floods several times a year.” Photographs of the flooding were provided as Appendix C of the Evaluation.
 - d. This flooding and its effects were also confirmed by undisputed testimony from several residents of the immediate area that flooding occurs so regularly that the local school district has a programmed call to all local student families advising that River Road is impassible for school buses and that children must be picked up at the Fire Hall because the bus routes cannot get to individual homes.
 - e. This flooding and its effects of it were also confirmed by several area residents who spoke in opposition to the Application and testified about first-hand knowledge of the regular occurrence of flooding that makes River Road impassible. They described regular occurrences of having to park their own cars at remote locations such as the local fire hall to avoid flooding, with transportation to their own homes only by pickup trucks and SUVs.
 - f. And finally, this flooding and its effects of it were also confirmed by the Indian River Fire Company’s decision to not object to the Application with an entrance to River Road only because a necessary and separate emergency access was proposed.

John [Jackson] Draine Lane. From the face of the easement, which is included in the record as Exhibit 20 of the Applicant's Exhibit Book, it was only intended for use by the properties and owners identified in it. The easement agreement did not contemplate that such a separate parcel would be subdivided into 123 lots with each of those lots having access to the easement. The other properties that do have rightful access to John [Jackson] Draine Lane did not sign up for such an intense use of their easement by other property owners who were never part of the easement agreement in the first place.

- e. Each of the property owners who have access to John [Jackson] Draine Lane and testified against the application stated that they oppose the use of the easement for any sort of access to the Stillwater Harbor development. They testified that the reasons for this opposition included their belief that the development has no right to access the private easement, that the existing dirt road is incapable of handling the heavy EMS equipment and the additional traffic that would occur, and other factors. There is no compelling reason why the County should impose a significant burden upon the existing users of John [Jackson] Draine Lane by approving this subdivision with a mandatory condition requiring access to the Lane when the land that is the subject of this application was never part of the easement, to begin with. This is also an entirely different situation from interconnectivity between adjacent subdivisions where both roadways are paved and built to Sussex County Road Standards and dedicated to public use. Here, John [Jackson] Draine Lane is an offsite private easement that is merely a dirt driveway.
 - f. For all of these reasons, John [Jackson] Draine Lane is not a suitable, viable, or legal means of secondary access to this subdivision. That leaves only the primary entrance to River Road, which the Indian River Volunteer Fire Company has acknowledged cannot safely be the sole means of access to this development.
9. Given the undisputed flooding and access issues via River Road, an approval of this subdivision with the sole point of access from River Road would be harmful to the health, safety, and welfare of the future residents of the development. For example, Sussex County Paramedics, State Police, or the local fire company would not be able to get to lots within the development during a flood event. Conversely, residents would not be able to evacuate the area in a severe weather event, or even leave the development for a personal health emergency or other important reasons. While less significant, the inaccessibility would impact more mundane services such as the postal service, UPS, FedEx, and Amazon, and even daily conveniences such as food delivery and passenger service businesses.
10. The Comprehensive Plan's Conservation Element notes that the County has developed a Hazard Mitigation Plan in response to the damaging effects of not only severe weather but also flooding that is occurring more regularly in the low-lying coastal areas of Sussex County like this location. The Plan directs the County "to protect residents from the impacts of flooding as it makes land use decisions." Here, there is no dispute that this area floods. The County should not put new residents in jeopardy by approving this subdivision in a location where flooding already occurs. It would make a bad situation worse.
11. I am also not satisfied that the Applicant has adequately addressed the items set forth in Section 99-9C of the Sussex County Subdivision Code.
- a. I do not believe that this project is integrated into the existing terrain and surrounding landscape. The property includes a tidal branch and a lot of tidal and federal wetlands. There is a substantial drop in elevation between the lots and cul-de-sacs and these environmentally sensitive areas. On top of that, the design of the development proposes substantial tree removal right along the upper edge of the topographic drop-off to the wetlands and branch below. The Applicant has not satisfactorily addressed how the tree

removal and soil disturbance at the top of this natural grade change will not adversely impact the wetlands and tidal branch below. As our Comprehensive Plan has recognized, it is areas exactly like this that must be protected to maintain and improve the water quality in our Inland Bays.

- b. For the same reason, I do not believe that this project has adequately addressed the preservation of natural features. Although the Applicant's response to item 3 of Section 99-9C is that "the roadway system, stormwater features and lots were designed in such a way to minimize impacts/disturbance of steep slopes", the applicant has not sufficiently shown how this is accomplished. This is particularly the case when in several instances the cul-de-sacs, roadways, and lots are proposed immediately next to the top of these steep slopes with the resulting tree and vegetation removal at the very top of the slope that will likely destabilize the slope and damage the sensitive areas below.
- c. I do not believe that the Applicant has adequately addressed the minimization of tree, vegetation, and soil removal and grade changes. In the PLUS Report on this project, DNREC has stated that "*This project is located on one of the last remaining parcels of large contiguous forest in [the] frequently flooded Oak Orchard area. Removal of these forest lands risks increased flooding/drainage issues for residents (existing and new), increased nutrient input into the Inland Bays, and significant habitat loss for migratory birds.*". This concern was further expressed by the Secretary of the Department of Agriculture in his letter of April 20, 2023, wherein he stated that, "*The Delaware Department of Agriculture opposes the Stillwater Harbor Development currently under review. The loss of the riparian forest and wetlands will be substantial, potentially increasing flooding and Inland Bays pollution. It is a certainty that the removal of one of the most extensive tracts of forested land in that area will have devastating impacts on drainage for current and future residents.*" A significant amount of deforestation is proposed for this site. In fact, approximately 78% of the existing forest is proposed to be removed. The Applicant has stated that many of these trees started growing in the 1990s and the land was farmed before that. I do not find that to be a compelling reason to justify the removal of these trees in this environmentally sensitive area. Every forest in Sussex County had to start at some point. This is a greater concern in an environmentally important location like this – a unique one in Sussex County with a tidal branch and tidal and federal wetlands that drain right into our Inland Bays. Tree, vegetation, and soil removal should be limited to the fullest extent possible, and the Applicant has not demonstrated that it has looked at every design alternative that would mitigate this. Instead, it is apparent from the proposed site plan that the Applicant has simply tried to maximize the lot yield given the geometry and topography of the site.
- d. I am not satisfied that the prevention of surface and groundwater pollution or the minimization of erosion and sedimentation, changes to groundwater levels, or increased rates of runoff have been addressed. For the reasons I have mentioned, this site will be substantially disturbed if this development is approved. I do not believe that the Applicant has adequately shown how that disturbance at the very top of the steep bank next to the wetlands and tidal branch will not have an adverse impact on the water quality of that branch or the Inland Bays that it feeds into. This concern was specifically mentioned in the DNREC Evaluation that explained that development like this in this area causes an increase in impervious area and therefore an increase in flooding frequency from localized runoff. Groundwater issues are already bad in this area because of local runoff due to stormwater, drainage, and transportation infrastructure that is undersized or in disrepair. The Applicant has not addressed how this project will avoid this documented existing problem and not make it worse.

- e. I have already mentioned how this project, with the documented deficiencies of River Road, does not provide for safe vehicular and pedestrian movement within the site and to adjacent ways, so I will not reiterate those issues. It is sufficient to state that it is undisputed that River Road is currently deficient in its condition now and it floods frequently. DelDOT, DNREC, and the local Fire Company all agree on this point. This project does not provide for a safe entrance, and the problematic proposal to have access to John [Jackson] Draine Lane by First Responders and the vehicles of this subdivision does not satisfy this requirement. Given all of these limitations, and the limited measures proposed to overcome them, this project does not provide for safe and continuous access to the site.
- f. I am not satisfied that the project has considered its effect on schools. This factor uniquely applies to this subdivision, since it is not the potential number of new students that is at issue, but instead the ability of those new students to get to and from their schools in flooding events. There was undisputed testimony in the record that River Road floods so frequently that the local school district has an auto-call programmed to call existing residents during flood events about alternate pick-up and drop-off locations for the children who are bussed. Apparently, the alternate location is the local fire hall. This is a safety concern that currently exists and it should not be made worse by approving another development with more school children who cannot be picked up and dropped off at their regular location because of frequent weather events that make the nearby roads impassable.

12. For all of these reasons, I move that we deny Subdivision No. 2021-23 for Stillwater Harbor.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to deny 2021-23 Stillwater Harbor for the reasons stated in the motion. Motion carried 4-0. Mr. Hopkins abstained.

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

Mr. Mears voted yea on the motion to deny the Application for the rock-solid reasons and conditions stated in the motion, which was developed from public testimony and agency opinions.

Ms. Wingate voted yea on the motion to deny the Application for all of the reasons stated in the motion, specifically due to the concern about the lack of access to the development due to the flooding on River Road and particularly the emergency personnel.

Ms. Stevenson voted yea on her motion to deny the Application for the reasons stated in her motion; that she has stood in that water; that she knows how bad [the flooding] is, and she stated if the Commission were to allow the project as it is presented now, someone, someday would say “*Who let that happen.*”

Mr. Hopkins abstained.

Chairman Wheatley voted yea, in favor of the motion, to deny for the reasons stated in the motion, most especially because of the obvious flooding concern, and the insufficiency of the easement and any other access to the site. Chairman Wheatley stated it was just not good land use.

C/Z 1973 Osprey Point Preserve, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL

PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85-ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS. The property is lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274). 911 Address: N/A. Tax Parcels: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00.

The Commission discussed the Application which had been deferred since August 11, 2022.

Ms. Stevenson moved that the Commission recommend a partial denial of C/Z 1973 Osprey Point Preserve, LLC to amend the Osprey Point RPC, approved as C/Z 1759 and Ordinance No. 2475 to allow commercial uses within the Residential Planned Community based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking to amend the Osprey Point Residential Planned Community approved as C/Z 1759 and Ordinance No. 2475 to add a commercial use to the RPC in the form of a restaurant and commercial marina. When Osprey Point was first approved, it did not include commercial uses.
2. A rezoning application such as this is legislative in nature. Therefore, Sussex County has discretion in deciding whether to approve this amendment to the RPC. In this case, there was substantial opposition to the request from neighboring property owners citing concerns about the incompatibility of commercial uses with the surrounding residential areas, increased traffic, increased noise, and other negative impacts of the request. I find all of this to be compelling and in support of a denial of this request.
3. The Sussex County Zoning Code permits certain limited commercial uses within an RPC. It states that “commercial uses of convenience and necessity to the development as a whole” may be permitted. In this case, the proposal seeks to allow a waterfront restaurant to be built within this otherwise residential community, which is itself surrounded by residential development. Waterfront restaurants, by their nature, are very popular attractions and there are not many of them in Sussex County. One such example is Paradise Grill within the Pot Nets residential community. It is common knowledge that it attracts customers from far and wide given its location and views. Such a restaurant would be no different here, and it would clearly not only be “for the convenience and necessity of” Osprey Point as required by the Zoning Code. What is proposed does not fall under the type of commercial use that is permitted in an RPC.
4. At the time Osprey Point was approved by Ordinance No. 2475, the residential density of the development was substantially reduced because of opposition to the density that was originally proposed. The Ordinance states that the original density and housing types were inconsistent with the surrounding residential communities. A destination-waterfront restaurant would certainly be a more intensive use than anything else in this area of Old Landing Road. I see no compelling reason to go backward against the determination in 2016 to reduce the intensity of the RPC by permitting more intensive commercial uses within the residential development and its surrounding neighborhood now.
5. Old Landing Road is a two-lane, dead-end winding road. It is not currently suited to handle the increased traffic, pedestrians, bikers, trash trucks, and delivery vehicles that would be utilizing this destination restaurant if approved.
6. In summary, I do not see any legitimate reason to permit an intensive commercial use in the form of what would certainly be a waterfront-destination restaurant that will attract customers from

far and wide beyond the confines of just Osprey Point. What has been asked for exceeds what is intended for the limited commercial uses within an RPC. For all of these reasons, it is recommended that the request to amend C/Z 1759 and Ordinance No. 2475 to allow commercial uses in the form of a restaurant and commercial marina within the RPC should be denied.

7. However, I am recommending approval of a marina of no more than 25 boat slips for the exclusive use of the residents of Osprey Point. The slips in this marina may not be bought, sold, leased, or occupied by anyone other than property owners within Osprey Point. The approval of this marina as an amenity for Osprey Point is subject to the following conditions:
 - a. This marina shall be an amenity for the property owners within Osprey Point and shall be limited to use by boats owned by property owners within Osprey Point. No slips shall be bought, sold, leased, or occupied by anyone other than owners of residential units within Osprey Point.
 - b. There shall be no more than 25 boat slips within the marina.
 - c. No boats shall be repaired or refueled at the marina.
 - d. There shall not be any pump-out location on the docks or within the marina.
 - e. DNREC approval shall be obtained for the marina use prior to Final Site Plan approval.
 - f. The existing Final Site Plan for Osprey Point shall be revised to include this marina as an amenity for the property owners within the development. The revised Final Site Plan shall include Condition A above. The Revised Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend a partial denial of C/Z 1973 Osprey Point Preserve, LLC, for the request to amend the Osprey Point RPC, to allow commercial uses within the Residential Planned Community, and to recommend partial approval of the request for a marina, for the reasons and conditions stated in the motion. Motion carried 4-1.

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

Mr. Mears voted yea on the motion for the reasons and the conditions stated in the motion.

Ms. Wingate voted yea on the motion for the reasons and the conditions stated in the motion.

Ms. Stevenson voted yea on her motion for the reasons and the conditions stated in her motion.

Mr. Hopkins voted nay on the motion. Mr. Hopkins stated there are people who live along Old Landing Rd. who are forced to access Rt. 1 to visit a restaurant; that he believes there is a balance to all of it when considering the amount of traffic on Rt. 1 and therefore he voted against the motion.

Chairman Wheatley reluctantly voted yea on the motion, as he also agreed with Mr. Hopkin’s comments.

C/U 2421 Jonathan & Laura Brittingham

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 46.17 ACRES, MORE OR LESS. The properties are lying on the south side of Phillips Hill Road (S.C.R. 472), approximately 0.63 mile west of Revel Road (S.C.R. 410). 911 Address: 22518 Phillips Hill Road, Millsboro. Tax Map Parcels: 133-19.00-21.00 & 22.00.

The Commission discussed the Application which had been deferred since June 8, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2421 Jonathan & Laura Brittingham for an Event Venue based upon the record made during the public hearing and for the following reasons:

1. The use will occur on a .4674-acre area within a larger 46.17-acre parcel of land owned by the applicant. This larger parcel is currently being used for agricultural purposes and the record shows that it is now planted with 3,200 lavender plants.
2. The use will occur within renovated agricultural buildings and the areas surrounding those buildings.
3. This use is an extension of the prior and ongoing agricultural use of the property. It is also consistent with the agricultural uses that occur on the surrounding farmland. The use is an "agritourism" location in Sussex County.
4. The Applicant intends to hold events that include weddings, birthday parties, festivals, dinners, parties, and similar functions with limited hours.
5. The site will have sufficient areas for parking.
6. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
7. The use promotes agricultural activities in Sussex County and is an innovative agritourism destination.
8. No parties appeared in opposition to the Application.
9. This recommendation is subject to the following conditions:
 - A. The area shall be an events venue for weddings, benefits, concerts, dinners, festivals, parties, and similar activities.
 - B. The area set aside for the Conditional Use, including all areas to be used for parking, shall be clearly shown on the Final Site Plan.
 - C. All events shall end no later than 10:00 pm on Fridays and Saturdays and 6:00 pm on Sundays and the remaining weekdays.
 - D. Any food and beverage service shall be provided by catering services. No permanent on-site kitchen facilities shall be permitted except for warming or final food prep as needed.
 - E. Portable toilet facilities may be used during events as needed.
 - F. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. The interior driveways and parking areas shall contain sufficient space for vehicles and shuttle buses to turn around completely on the site.
 - G. All activities on the premises shall comply with Fire Marshal, parking capacity, and general permitting requirements.
 - H. All entrance locations shall be subject to the review and approval of DelDOT.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2421 Jonathan & Laura Brittingham for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

Mr. Mears voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Wingate voted yea on her motion for the reasons and conditions stated in her motion.

Ms. Stevenson abstained.

Mr. Hopkins voted yea on the motion for the reasons and conditions stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons and conditions stated in the motion.

C/U 2437 James R. Powell

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.95 ACRES, MORE OR LESS. The property is lying on the north side of Burton Farm Road (S.C.R. 373) and the west side of Blackwater Road (S.C.R. 374) at the intersection of Burton Farm Road (S.C.R. 373 and Blackwater Road (S.C.R. 374). 911 Address: 34309 Burton Farm Road, Frankford. Tax Map Parcel: 134-15.00-19.02 (p/o).

The Commission discussed the Application which had been deferred since June 8, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2437 James R. Powell for an outdoor RV and boat storage facility within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for an RV and boat storage facility on approximately 7.95 acres.
2. There is a need for the use proposed by the Applicant in this area of Sussex County. There are many nearby residential developments that prohibit the storage or parking of boats and RVs within them. This is an appropriate, convenient location that addresses the need for off-site storage of their boats and RVs.
3. The Applicant has stated that access will be limited and will be controlled by keycards. As a result, the use will not have a substantial impact upon area roadways.
4. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
5. The use as a boat and RV storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
6. No parties appeared in opposition to this Application.
7. This recommendation for approval is subject to the following conditions:
 - A. The use shall be limited to the storage of boats and RVs. No other storage of vehicles or equipment shall occur on the site.
 - B. The facility shall only be accessible from 6:00 am until dusk and access to the site shall be locked to prevent after-hours access.
 - C. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways.
 - D. There shall be a landscaping buffer between the outside of the fence and any adjacent residential properties to screen the use and the fence from those adjacent homes. The Final Site Plan for this use shall show the location of this buffer and it shall include a landscaping plan for it.
 - E. No sales or maintenance of boats or RVs shall occur on the site.
 - F. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.

- G. No more than 250 boats and RVs shall be permitted on the site.
- H. The use shall be subject to all DeIDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
- I. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and RVs located on the site.
- J. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
- K. No junked or unregistered boats, boat trailers, or RVs shall be stored on the site.
- L. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2437 James R. Powell, for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

Mr. Mears voted yea on his motion for the reasons and conditions stated in his motion.

Ms. Wingate voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Stevenson abstained.

Mr. Hopkins voted yea on the motion for the reasons and conditions stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons and conditions stated in the motion.

C/Z 1982 Peninsula Lakes, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM RESIDENTIAL–RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM RESIDENTIAL–RESIDENTIAL PLANNED COMMUNITY DISTRICT AND TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1474 (ORDINANCE NO. 1572) RELATING TO THE REQUIREMENT TO PROVIDE A PARK AND RIDE FACILITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.2 ACRES, MORE OR LESS.

The property is lying on the west side of Bay Farm Road (S.C.R. 299) and the east side of Starling Lane, approximately 0.56 mile southeast of John J. Williams Highway (Route 24). 911 Address: N/A. Tax Map Parcel: 234-29.00-248.04.

The Commission discussed the Application which had been deferred since June 8, 2023.

Mr. Mears moved that the Commission recommend approval of the request from Peninsula Lakes, LLC to delete Condition No. 7 contained in C/Z 1474 and Ordinance No. 1572 regarding the requirement to install a “Park & Ride” facility within the boundaries of the Peninsula Lakes MR-RPC based upon the record made during the public hearing and for the following reasons:

1. When Change in Zone No. 1474 and Ordinance No. 1572 were approved for the Peninsula Lakes MR-RPC, that approval included a condition requiring a “Park & Ride” facility within the development. Specifically, Condition No. 7 of the MR-RPC approval stated as follows:

“The development shall contain a “Park & Ride” parking and pick up facility available to the public at a location to be determined by DART and subject to Site Plan Review by DelDOT and the Planning & Zoning Commission. These improvements shall be completed within two (2) years of the issuance of the first building permit.”

2. The residents of Peninsula Lakes were surveyed about the possibility of a Park & Ride facility within their development. Comments were solicited from 100% of the existing property owners. Of the 259 results received, 253 residents did not want the Park & Ride facility within their development. That represents 98% of the people who responded. That is a substantial majority in favor of the removal of the Park & Ride condition of approval.
3. DelDOT and DTC have no objection to the removal of the Park & Ride facility. The Applicant testified that DelDOT and DTC were not aware of the proposed location and have no plans to construct a Park & Ride facility within this development. A representative of DTC confirmed this by testifying during the hearing.
4. Because DelDOT and DTC have stated that there are no plans to install a Park & Ride facility in this location and they are not going to do so, compliance with this condition is impossible. For that reason, it should be deleted.
5. Reasons given by the community in support of the removal of this condition included increased noise within the residential development; pedestrian and vehicular safety concerns; increased exhaust and pollution within the development; additional wear and tear on subdivision streets from the large buses and additional traffic; the impact of increased light pollution from the use; and other factors. These are all viable reasons and support the deletion of this condition. There is no compelling reason to place a large public transportation hub and all that is involved with that type of use within this residential community.
6. It is likely that a Park & Ride facility is appropriate for this area of the County. However, there are much more appropriate locations for such a use that are in closer proximity to Route 24, have greater visibility to the traveling public, and are generally more accessible to everyone using the system.
7. Finally, there is no clarity in the record from the original approval justifying this Park & Ride facility in the first place.
8. For all of these reasons, it is appropriate to delete Condition No. 7 from the Conditions of Approval of the Peninsula Lakes MR-RPC.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of the request of Peninsula Lakes, LLC, to delete Condition No. 7 contained in C/Z 1474 and Ordinance No. 1572, regarding the requirement to install a “Park & Ride” facility within the boundaries of the Peninsula Lakes MR-RPC, for the reasons stated in the motion. Motion carried 5-0.

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

Mr. Mears voted yea on his motion for the reasons and conditions stated in his motion.

Ms. Wingate voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Stevenson voted yea on the motion for the reasons and conditions stated in the motion.

Mr. Hopkins voted yea on the motion for the reasons and conditions stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons and conditions stated in the motion.

2022-23 Showfield

A request to amend the Conditions of Approval for subdivision reference 2014-2 Showfield, to include gated access at Monroe Avenue Ext. to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is located within the 166 Lot Showfield Subdivision, on Monroe Avenue Ext., approximately 187.3 feet from the intersection of Battlemixer Drive and Monroe Avenue Ext. 911 Address: N/A. Tax Map Parcel: 335-8.00-51.00. Zoning District: AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since May 25, 2023.

Ms. Stevenson moved that the Commission deny the request to amend the Conditions of Approval and recorded Final Site Plan for 2022-23 Showfield to allow the Monroe Avenue entrance to become gated for the following reasons.

1. The Commission has the authority to govern roadways within subdivisions in Sussex County. Title 9, Section 6810(a) of the *Delaware Code* confirms the Commission's authority over roads and subdivisions, stating that, "The location, proposed grades and drainage of all roads intended to be dedicated by the owner thereof to the public use *or for the use of owners of property abutting thereon or adjacent thereto* within the limits of the District shall be submitted to the Commission for its approval. . .".
2. Section 99-9.C of the Sussex Code states that "the approval of a subdivision shall include consideration of the following: . . . (11) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways." and "(15) Effect on area roadways and public transportation..." These factors were all considered when this subdivision was originally approved and there is no legitimate reason to change that original approval now.
3. Section 99-17 of the Code provides guiding principles for street design. Section 99-17.D. states that "Proposed collector streets in the subdivision **shall provide for the continuation of existing, planned or platted streets on adjacent tracts** unless such continuation shall be prevented by topography or other physical condition or unless such extension is found by the Commission to be unnecessary for the coordination of development between the subdivision and such adjacent tracts." Section 99-17.D of our Code effectively mandates this interconnectivity and there is no compelling reason to limit it between these two subdivisions and the City of Lewes's Monroe Avenue.
4. Our Sussex County Comprehensive Plan promotes interconnectivity like what is required in Showfield. For example, Section 12.2.3 of the Plan states that the County "should encourage interconnectivity between parcels of land" like the Monroe Avenue interconnectivity here. This is summarized in Objective 12.1.4 of the Plan, which states that the County should "encourage development design that promotes increased access between developments and community facilities including parks, schools, and libraries." More specifically, Strategies 12.1.4.2 and 12.1.4.3 direct the County to implement the interconnectivity required in Showfield by "encourage[ing] interconnectivity" and "create[ing] multiple, alternate routes for automobiles....". Amending the approved interconnectivity between Showfield and Monroe Avenue would be inconsistent with these directives of our County Comprehensive Plan.
5. Sussex County has been criticized for not undertaking a "master plan" approach to development design. Interconnectivity is an important aspect of master planning. The County should not be asked to delete or limit access to a road that was approved after considering the larger area, other developments, and adjacent roadways. Doing so would run counter to the idea that master planning and the interconnectivity that goes along with it is a good land-use tool that is beneficial

to Sussex County. And, retroactively amending a site plan to delete interconnectivity would undermine the overall design and the finality of any master-planned development.

6. Showfield was specifically approved with interconnectivity to Monroe Avenue and the adjacent property within the City of Lewes. And, the adjacent property was approved for a subdivision within the City of Lewes providing for and expecting interconnectivity with Showfield. In neither case was a blockade or limited access interconnection contemplated when these two developments were approved. There is no compelling reason to change that design now.
7. The gates will be a hindrance to GPS mapping and directions, which do not necessarily recognize the existence of the gates.
8. The record does not contain any agreement or consent from the Sussex County Paramedics, the Sussex County Emergency Operations Center, utility providers, State Police, or the Lewes Police Department to change the road design or accessibility. Also, the Applicant did not provide any information about the impact of the Monroe Avenue gate on local school district buses, the postal service, UPS, FedEx, and Amazon, or even daily conveniences such as food delivery and passenger service businesses.
9. Once the development within the City Limits is completed, the gate at the adjoining interior boundary of these two developments will not prevent any traffic from entering from either the Sussex County side or the Lewes side. In fact, it is likely that it will double the amount of traffic coming in or out of either side. Anyone unaware of the gate would come halfway into the development before hitting the blockage- only to be forced to turn around the same way they came in, possibly at a high rate of speed to make up for lost time.
10. While there was testimony in the record about traffic and excess speed within Showfield, the actual impact of Monroe Avenue remaining open is largely speculative. The data provided during the hearing suggested that a substantial majority of the issues complained about come from the driving habits of Showfield residents and have nothing to do with interconnectivity. Also, Monroe Avenue is currently inaccessible or difficult to access because of construction occurring in the adjacent subdivision within the City of Lewes. Therefore, any alleged negative impacts of the interconnectivity are uncertain at best. There is simply no compelling reason in the record to modify the approved Site Plan to limit interconnectivity over Monroe Avenue.
11. There was testimony from residents in Showfield about the rate of speed of the vehicles traveling in the neighborhood and the amount of traffic that will be generated if Monroe Avenue remains open. Speed and traffic calming can be a legitimate concern of the community, but there are better ways to address these issues, such as stop signs, cameras, speed bumps, and speed limits.
12. The Site Plan for this development was approved for this development with uninterrupted access between it and Freeman Highway. Everyone owning property within the development bought their lot subject to this open interconnectivity. Also, the City of Lewes approved the adjacent development with the Monroe Avenue interconnectivity after public hearings and an opportunity for anyone interested to object to it. I do not find any compelling reason why this development would have originally been approved with a gate in the middle of Monroe Avenue as requested here and the record does not provide any compelling reason why this road should be gated now. Additionally, neither the County Code, the County Comprehensive Plan nor good planning supports an amendment to the approved site plan to place a gate to block access between this development and Monroe Avenue.
13. For all of these reasons, it is my motion that the request to approve the gates in their present location should be denied and that no gates should be placed on this road to prevent interconnectivity that is open at all times.

Motion by Ms. Stevenson, seconded by Mr. Wingate and carried unanimously to deny the request to amend the Conditions of Approval and recorded Final Site Plan for 2022-23 Showfield to allow the Monroe Avenue entrance to become gated for the reasons stated in the motion. Motion carried 3-2.

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

Mr. Mears voted nay on the motion to deny.

Ms. Wingate voted yea on the motion to deny for the reasons stated in the motion.

Ms. Stevenson voted yea on her motion to deny because Master Planning is something the Commission is trying to get people to do; that [Master Planning] allows better planning for the safety and the lives of people within Sussex County.

Mr. Hopkins voted nay on the motion to deny. Mr. Hopkins stated he did understand how the Commission would vote against a restaurant at the end of Old Landing Road because of traffic, but yet allow traffic from a main highway to pass through a subdivision; that he did believe the situation to be typical; that he felt it will provide a short cut for a lot of traffic from a heavily traveled road; that he is concerned about the testified 10-15% will increase and the small size of the streets.

Chairman Wheatley voted yea on the motion to deny for the reasons stated in the motion.

C/Z 1979 J.G. Townsend, Jr. & Co.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS. The property is lying on the east side of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267), at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: 16673 Kings Highway, Lewes. Tax Map Parcel: 335-12.00-3.00 (p/o).

The Commission discussed the Application which had been deferred since May 25, 2023.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1979 J.G. Townsend, Jr. & Co., for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available. It is also in an area with a more urban character since it is near the City of Lewes, in the vicinity of a high school campus, and near various businesses. There is also other MR-Zoned land in the area. This rezoning is consistent with other zoning and land uses in the area.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
5. The intended use of this property will be to allow the development of it with multi-family residential units. This is an appropriate use for this location given its surroundings.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate

roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.

7. DeIDOT has stated that the proposed rezoning to MR will have a “minor” impact upon local area roadways. In addition, the overall traffic in the area has recently been studied through Traffic Impact Studies and Traffic Operations Analysis for other nearby properties. These studies take into account this proposed rezoning as well as DeIDOT’s “US9, Kings Highway, Dartmouth Drive to Freeman Highway (DeIDOT Contract No. T202212901)”.
8. For all of these reasons, MR zoning is appropriate for this site.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1979 J.G. Townsend, Jr. & Co., for the reasons stated in the motion. Motion carried 5-0.

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

Mr. Mears voted yea on the motion for the reasons stated in the motion.

Ms. Wingate voted yea on the motion for the reasons stated in the motion.

Ms. Stevenson voted yea on her motion for the reasons stated in her motion.

Mr. Hopkins voted yea on the motion for the reasons stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons stated in the motion.

C/U 2359 J.G. Townsend Jr. & Co.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR (MEDIUM RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (102 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS. The property is lying on the east side of Kings Highway (Rt.9) and the south side of Gills Neck Road (S.C.R. 267), at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: 16673 Kings Highway, Lewes. Tax Map Parcel: 335-12.00-3.00 (p/o).

The Commission discussed the Application which had been deferred since May 25, 2023.

Ms. Stevenson moved that the Commission recommend approval of C/U 2359 J.G. Townsend, Jr. & Co., for 102 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. This property has been recommended for approval of a Change in Zone from AR-1 to MR Medium Density Residential. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gills Neck Road and Kings Highway lighted intersection and the Kings Highway and Cave Neck Road lighted intersection. DeIDOT is also planning to improve the Kings Highway Corridor in the near future. Multi-family development is appropriate for this property in the area of these roadways and intersections.

4. The property is in the immediate vicinity of other properties with a variety of business, commercial, and institutional uses. The site is near the Cape Henlopen High School campus. It is near the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the City. Some nearby residential uses include Dutchman’s Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This is also the last parcel of the planned development of Gills Neck Road, with an appropriate density transitioning between the adjacent B-1 property on one side and the existing multifamily units on the other side. This conditional use at approximately six (6) units per acre is consistent with other zoning and multi-family developments in the area.
5. DelDOT has reviewed the proposed project and has determined that its traffic impact will be “Minor”. When DelDOT determines that the traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer’s obligation to construct or pay for offsite road improvements that are required by DelDOT. This project has also already been incorporated into other existing Traffic Impact Studies and Traffic Operational Analysis as well as DelDot’s Contract No. T202212901 for US9, Kings Highway, Dartmouth Drive to Freeman Highway. As the Site Plan is finalized, DelDOT will also require the developer to provide safe vehicular and pedestrian movement onto Gills Neck Road and King’s Highway.
6. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
7. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
8. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
9. This recommendation is subject to the following conditions:
 - A. There shall be no more than 102 Units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s determination.
 - C. The recreational amenities shall include cottage courts, pocket parks, green area, and a central amenity area, including a pool with at least 10,000 square feet of surface area, and a community center/clubhouse of at least 2,000 square feet in size. These amenities shall be completed within the development as follows:
 - i. The Community Center/Clubhouse and pool shall be completed on or before the 60th residential building permit; and
 - ii. The other amenities shall be completed as the adjacent dwellings are completed.
 - D. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - E. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.

- F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G. Interior street design shall comply with or exceed Sussex County standards. However, the Sussex County Street design standards shall not apply to the parking lanes within the development.
- H. This project is interconnected with the adjacent commercial areas facing Kings Highway as well as the Governors community which is itself interconnected with the Senators Community. This interconnection is part of the larger plan for the residential development of Kings Highway and Gills Neck Road. This interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from them in addition to using Gills Neck Road. This interconnectivity has been part of the developer's Master Plan for this entire area, and it has been shown and approved by Sussex County at each stage of development along Gills Neck Road. Therefore, once construction is completed this interconnectivity must remain open to all vehicular traffic at all times without obstruction.
- I. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. If it is, the location of such a bus stop shall be shown on the Final Site Plan.
- K. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday and on Saturdays between October 1 and April 30th. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- L. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design for the community including the transitional landscaping used to screen the common boundary between this development and Governors. No buffering shall be required along the stormwater ponds shared with the adjacent Governors community. The Landscape Plan shall identify all "Limits of Disturbance" within the site and these "Limits of Disturbance" shall be clearly marked on the site itself.
- M. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- N. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- O. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the following notes shall be included within the Final Site Plan to ensure the long-term viability of the Wellhead Protection Area:

"During construction document plan review, the Applicant/Developer shall provide verification to the Sussex County Engineering Department that the post-development recharge exceeds the pre-development volume as calculated within the Water Climatic Budget. Additional recharge may be required if the side slop infiltration in the existing stormwater management ponds do not meet this requirement."

"Rooftop air conditioning system components requiring intermittent unit blowdown are

prohibited within the cottages project. The recorded condominium declaration for the cottages shall include this prohibition.”

- P. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- Q. The Final Site Plan shall depict or note these Conditions of Approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2359 J.G. Townsend, Jr. & Co., for the reasons and conditions stated in the motion. Motion carried 5-0.

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

Mr. Mears voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Wingate voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Stevenson voted yea on her motion for the reasons and conditions stated in her motion.

Mr. Hopkins voted yea on the motion for the reasons and conditions stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons and conditions stated in the motion.

Recess

4:37 pm – 5:00 pm

PUBLIC HEARINGS

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

C/U 2396 Noel Bowman

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PERSONAL TRAINING & MARTIAL ARTS SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.23 ACRES, MORE OR LESS. The property is lying on the northeast side of Wilgus Cemetery Road (S.C.R. 381A), approximately 0.42 mile west of Bayard Road (S.C.R. 384). 911 Address: 34615 Wilgus Cemetery Road, Frankford. Tax Map Parcel: 533-6.00-115.08.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, the property survey, the DelDOT Service Level Evaluation Response, and the property deed. Mr. Whitehouse stated that zero comments and one mail return had been received for the Application.

The Commission found that Mr. Noel Bowman spoke on behalf of his Application. Mr. Bowman stated the martial arts school was previously renting a location in Ocean View; that his school has trained, and

currently trains law enforcement, including local and State law enforcement; that last year he trained the seasonal police for Bethany and Dewey; that he sold his house in Millville and purchased the subject property in hopes to live and work at the same site; that this would allow him to no longer pay rent; that the area is very wooded; that the road is traveled, however, it is not traveled heavily; that they have a neighbor located directly across the street; that there is over an acre of woods located to one side, and a neighbor located on the other side of them; that there is not much located in the nearby area; that there is a business located at the intersection of Wilgus Cemetery Rd. and Honeysuckle Rd. and an electrician business located across the street, and he believed the business located on the corner, is a personal training business, which is run out of two large pole buildings.

Mr. Mears questioned if any firearms would be discharged on the property, the proposed hours of operation; the number of people anticipated for large classes, the number of provided parking spots, and if a lighted sign was desired.

Ms. Wingate questioned the days of the week for the business operations.

Mr. Hopkins stated he thought accommodating healthy, physical exercise and self-defense was great; that he appreciated the provided service for the community, and he would suggest the Commission not limit the Applicant to only six days a week, in the case, the Applicant would like to host an event on a Saturday.

Chairman Wheatley questioned if any of the activities produces excessive noise and if there is any type of outside storage.

Mr. Bowman stated no firearms would be discharged; that he offers classroom training; that in the mornings he offers one-on-one personal training; that his hours of operation could be anywhere between 7:00 am and 9:00 am; that he and his wife provide the one-on-one training; that a maximum of four people would be in the room at one time, being two trainers and two clients; that personal training typically ends by lunchtime; that his martial arts classes being at 5:30 pm; that he is considering beginning his martial arts classes as early as 3:30 pm; that the last class would end at 8:30 pm; that the largest class he has had consisted of 12 people; that he has provided 11 to 12 parking spots; that he would like a lighted sign; that they would provide classes Sunday through Friday; that Sunday classes would only be in the morning; that on Fridays, classes are over no later than 5:00 pm; that once a month he hosts a free women's self-defense class; that currently existing on the site there are three sheds and a big metal building; that they have a large tractor tire, which they storage outside, behind the pole building located next to the creek, and his neighbors create more noise than his business does.

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

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

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

Mr. Robertson read Mr. Mears' prepared motion, per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2396 Noel Bowman for a personal training and martial arts school based upon the record made during the public hearing, and for the following reasons:

1. The use is for a personal training and martial arts school located on the property where the applicant resides.
2. The use is small in nature and is very nearly a home occupation which would be a permitted use on this property.
3. The Applicant has stated that he provides personal training and self-defense training to the public. In addition, the Applicant provides training to state and local police officers as well as local seasonal police officers.
4. There is no excess noise generated by this use.
5. The use will not adversely affect neighboring properties or roadways.
6. The Applicant has stated that there will not be a firing range located on the premises and firearms will not be discharged on the premises.
7. The use provides a needed service for residents of Sussex County, as well as local police departments. As a result, the use has a public or semi-public character.
8. No parties appeared in opposition to the application.
9. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a personal training and martial arts school on the property.
 - B. As stated by the Applicant, no firearms shall be discharged on the site as part of the school.
 - C. All personal training and martial arts training shall conclude no later than 9:00 pm each evening.
 - E. One lighted sign, no larger than 32 square feet in size on each side shall be permitted.
 - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/U 2396 Noel Bowman for the reasons and conditions stated in the motion. Motion carried 5-0.

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

Mr. Mears voted yea on his motion for the reasons and conditions stated in his motion.

Ms. Wingate voted yea on the motion for the reasons and conditions stated in the motion.

Ms. Stevenson voted yea on the motion for the reasons and conditions stated in the motion.

Mr. Hopkins voted yea on the motion for the reasons and conditions stated in the motion.

Chairman Wheatley voted yea on the motion for the reasons and conditions stated in the motion.

C/U 2400 Kent Walston, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS. The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A. Tax Map Parcel: 134-17.07-173.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, the Applicant's Preliminary Site Plan, the Applicant's Exhibit Booklet, the DelDOT Service Level Evaluation Response, and the property deed. Mr. Whitehouse stated zero comments in support, 29 comments in opposition, and 11 mail returns had been received for the Application.

The Commission found that Mr. Chris Pfeifer, P.E., with George, Miles & Buhr, LLC (GMB) spoke on behalf of the Applicant, Mr. Paul McCabe; that Mr. McCabe was also present along with Ms. Katja Kalinski, a Land Planner with George, Miles & Buhr, LLC. Mr. Pfeifer stated the site consists of a 1.37 acre parcel, located on Kent Avenue, adjacent to the Bethany Beach; that the project seeks a Conditional Use for five townhome units; that the site is currently zoned MR (Medium Density Residential) and is located within the Coastal Area; that the Application went through the PLUS process; that they received the PLUS comments on December 17, 2021; that they submitted their PLUS comment responses on August 24, 2022; that the site is located within State Investment Level I, which are areas developed in an urban or suburban fashion, where infrastructure is existing and readily available, and future redevelopment and infill projects are expected and encouraged by State policy; that the project would be considered an infill project; that the site is surrounded by existing residential units; that the area to the north is within the Town of Bethany Beach, and zoned R2; that R2 zoning permits for one, two, three and four standard dwelling unit buildings; that directly adjacent to the north is the Bethany Proper community, which includes townhomes; that the 126 unit townhome community is located on a 14.28 acre parcel, which results in a density of approximately 8.5 units per acre; the area to the south is located within Sussex County, being mostly zoned MR (Medium-Density Residential); however, there is one parcel directly adjacent that is zoned HR (High Density Residential), which has seven units located on 1.38 acres, resulting in approximately five units per acre; that the Application seeks five townhome units with garages, to be located on the 1.37 acre parcel; that this would result in a density of 3.67 units per acre; that the project would have a shared driveway off Kent Avenue; that stormwater management will be designed to meet the requirements of Sussex Conservation District; that they did hold a pre-application meeting with Sussex Conservation District on July 21st, 2021; that there is public water readily available from Bethany Beach; that public sewer is provided by Sussex County; that an entrance is proposed off Kent Avenue, which is a DelDOT major collector road; that the entrance design would be coordinated with all DelDOT rules, regulations, review and approval; that a Traffic Impact Study (TIS) was not required because it is anticipated that less than 500 vehicle trips would be generated per day; that they did submit an updated Service Level Evaluation Request on April 27th, 2023 for the five dwelling units and five townhomes; that what they received back from DelDOT on May 26th, 2023, reflected the wrong unit count, still reflecting the three units; that he went through, using the same handbook that DelDOT did, to generate those calculations; that he found the project, proposing five units, would still remain under the 50 ADT that DelDOT referenced in the letter; that an Environmental Assessment was completed by Environmental Resources, Inc.; that a Public Facilities Evaluation Report was prepared by GMB, LLC; that there were no threatened or endangered species found on the site; the Environmental Resources, Inc. (ERI) also preformed site investigations in early 2022, and no State regulated or title wetlands are located on the property; that there are no anticipated impacts to federally regulated wetlands; that the open space would be under the proposed condominium regime; that there is public sewer and water available at the entrance of the site; that the condominium would maintain the ownership of all the interior utilities as well as the shared driveway; that some of the economic benefits of the site is the proposed use would be an infill development for a parcel that is currently vacant; that per the Sussex County Comprehensive Plan, the site is located within State Investment Level 1, falling within the Coastal Area, which is a designated growth area, and the proposed project is consistent with the Comprehensive Plan.

Ms. Stevenson questioned the number of parking spaces provided.

Mr. Pfeifer stated there is a one-car garage provided with each unit and additional parking provided outside of the garage as well, equaling up to two provided parking spaces per unit, with two additional spots on the site.

The Commission found that one person was present in the room who wished to speak in support of the Application and three people were present who wished to speak in opposition.

Mr. William [Bill] Lindlaw spoke in opposition to the Application. Mr. Lindlaw stated he is the HOA President of the Bethany Proper community; that Bethany Proper has 126 homes; that the homes located to the east have significant water issues and has had the issue for 40 years; that the area is a very marshy wet area; that they have required extra sub-pumps due to the water runoff from the lot; that they are very concerned with the current plans driveway location; that they feel the driveway location will exacerbate the runoff issue; that there is a drainage pond down at the bottom, but they are unsure how that pond will benefit their houses; that the picture shown was a bit misleading; that when the site was staked out, the property line was found to be located right on the decks of their houses, not leaving any space; that they were told when the houses were built over 40 years ago, the property line was misconstrued; that the houses were build practically to the property line; that they were assuming the project would be for two units; that five units will take up all of the buildable space; that the southern portion of the property is not buildable, as it is very marshy; that everything on the site will be either a street or a building, leaving very little green left; that they feel the proposed buffer may not be constructed as it appears; that they fear the area will become very sparse, creating the water issues to be compounded; that for these reasons, they would prefer to see a lower density proposed; that there was a new, two unit, duplex built nearby, on a similar property, and that is what they were expecting to be proposed for the site.

Mr. Pfeifer stated the goal is to leave as much of the wooded area as possible; that the property owner also desires to save as many trees as possible, as he also desires to have a buffer in that area; that they have attempted to leave as many woods as possible along the property line located between the site and Bethany Proper; that they are required to meet Sussex Conservation District requirements, and the proposed project is not allowed to make the stormwater situation any worse than it currently is.

Chairman Wheatley stated the Applicant is not obligated to fix the current water runoff issues; however, the Applicant cannot make the issue any worse.

Mr. Hopkins questioned if the topography of the site currently drains onto adjacent properties, and where any overflow drainage will go.

Ms. Wingate questioned the amount of overflow that would occur since the stormwater management would be constructed to capacity.

Mr. Pfeifer stated there is a sump located in the area where the stormwater facility is located in the southeast corner of the property; that theoretically, as the sump fills up, it does spill over onto adjacent properties; that there is a small swale located at the front of the site, that overflow drainage would discharge to; that there is no infiltration located on the site, and larger storm events would potentially create overflow, but the site would be designed to handle the overflow.

Mr. Hopkins stated he felt it was important that neighbors understand that the paved areas will be graded around the houses to ensure the water runoff will make its way to the stormwater pond; that once the pond fills, the runoff would flow towards the front of the property and out toward the ditch.

Mr. Pfeifer agreed with Mr. Hopkins's comments, confirming his statement was correct.

Chairman Wheatley questioned Mr. Whitehouse as to what would currently be permitted, without a Conditional Use, within the MR (Medium-Density Residential) Zoning District.

Mr. Whitehouse stated any multi-family would require a Conditional Use unless one were to propose a principal dwelling with a garage-studio apartment, or the property could be subdivided with lots as low as 10,000 sq. ft. because the property is served by sewer.

Mr. Robertson stated a property larger than one acre could get at least four lots, assuming the geometry works out on the site.

Chairman Wheatley stated when considering that information, the plan does appear to be sensitive to the adjacent properties, as the wooded areas are kept intact, and the Commission is able to condition the project to ensure the proposed trees are kept.

Mr. Hopkins questioned if the rendering reflected the current growth or the proposed growth; that if the topography has a hard fall off, it may be more beneficial to elevate the roads; that this could create the only runoff to the adjacent properties to be the runoff that falls within the trees and runs down, and the question is, would it be better to take out the trees, elevate, and then put trees back in.

Mr. Pfeifer stated that the topography is flat currently; that their proposed design would make it so that the paved area runoff would not be directed to adjacent properties.

Chairman Wheatley questioned if the current plan would be achievable without losing the existing woods, and stated the Commission can also require plantings if desired.

Mr. Pfeifer stated they would need to take a closer look at the grading; that there is some number of woods that would be able to remain on the site; that he could not currently confirm that number and they are attempting to keep as many existing trees onsite as possible.

Mr. Mears stated he grew up in Bethany Beach; that Bethany Proper foundations were built below grade; that due to this, sump pumps have been required; that this issue is going to exist regardless of what happens on the subject site, and that testimony had already been provided stating that.

Chairman Wheatley agreed with Mr. Mears' comments; that he stated, mistakes made on the adjacent property are not the responsibility of the Applicant, and the Applicant has no requirement to fix the issues of another site, but the law states the Applicant cannot make those existing issues any worse.

Mr. John Wassell spoke in opposition to the Application. Mr. Wassell stated he owns property within Bethany Proper; that he felt like the statement "*saving as many trees as possible*" was a bit generic, and he would like to narrow that down; that there are a lot of trees currently existing; that his property is adjacent to the site and the existing trees; that from the plans he understood most of the trees, being approximately 85% to 90%, of the trees will be removed; that he would request the developer to be more concise on the number of trees to be removed; that the current residents can walk to the beach from Bethany Proper; that they do not want to see people cutting through the community; that he questioned if a fence was included in the plan to avoid the potential issue.

Mr. Robertson stated that if the project were to be approved, the requirement would be whatever the

County would require; that the County would place conditions on the project, which would be required to be reflected on the Final Site Plan showing precisely what trees are to remain.

Chairman Wheatley stated he understood the concern of trespassing, however, it is not the Applicant's responsibility to place a fence, but the Commission would consider the concern.

Mr. Robertson stated there were multiple emails submitted suggesting the same concern from other residents of Bethany Proper.

Mr. Bob Nichols spoke in opposition to the Application. Mr. Nichols stated he was curious as to what the one kick-out area is proposed for as reflected on the drawing; that the questioned if the area was proposed for additional parking or proposed for a dumpster, and the trash pick-up location is a concern for him.

Ms. Wingate stated most units have regular trash pick up once a week and do not have dumpsters.

Chairman Wheatley stated if a dumpster is involved, screening would be required.

Ms. Ellen McGee spoke in support of the Application. Ms. McGee stated she is familiar with the property, and she knows the Applicant's family; that the family has lived in the area for generations; that she understood the neighbors' concerns, however, she believed the Applicant would do a good job.

The Commission found that one person wished to speak by teleconference in opposition to the Application.

Mr. John Fehrenbach spoke in opposition to the Application. Mr. Fehrenbach spoke with concerns regarding the retention of trees, the requirement for buffers, and the height restriction of the proposed buildings.

Mr. Whitehouse stated the zoning district would limit the buildings to a maximum of 42 feet; that there are mechanisms within the Code that require planting, bonding, maintenance, and inspection of landscape buffers and there is an inspection process for that.

Mr. Mears stated the neighboring properties located within the Town of Bethany have a 31-foot maximum height requirement within their Code; that this is the reason for the differences in building height; that this creates the feeling the building would tower over others, and the Applicant, nor Bethany Property owners, are able to control the fact that the properties are found within two different jurisdictions.

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

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

In relation to C/U 2400 Kent Walston, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2403 Beach Buggies, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1492 (ORDINANCE NO. 1653), RELATING TO

CONTRACTING WORK, OFFICE WORK, AND GENERAL BUSINESS TO BE CONDUCTED ON THE SITE, AND ALSO RELATING TO OCCUPANCY OF THE UNITS AS A PRINCIPAL PLACE OF BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.80 ACRES, MORE OR LESS. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.41 miles northwest of Dickerson Road (S.C.R. 389). 911 Address: 38288 London Avenue Unit 51, Selbyville. Tax Map Parcel: 533-18.00-61.01 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the original Site Plan, which was approved on December 30, 2004, a copy of Ordinance No. 1653 for C/U 1492, the Staff Analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and the property deed. Mr. Whitehouse stated zero comments had been received for the property.

The Commission found that Mr. Joseph Tribull spoke on behalf of his Application. Mr. Tribull stated he represented his family business, Beach Buggies, LLC; that their business buys, sells, and services golf carts; that they are located in the Williamsville Industrial Park; that they sell golf carts and help fix golf carts for residents in the area; that they work with a certain golf cart vendor to better help their side to the Selbyville side of town; that they do reach out and they do provide metal work; that the business does reside within Williamsville Industrial Park at 3288 London Avenue, Selbyville, Units 50 through 53; that Unit 51 is the main unit and entrance; that the area is a commercial-type setting, with commercial properties around it; that there are multiple businesses located at the industrial park, and some contractors using it for storage, and other businesses in the area are Sweet Disposition Bakery, and Brasure's Carpet Care and Pest Control.

Mr. Robertson advised the Commission that the Application is requesting an amendment to the existing Conditional Use [C/U 1492]; that the request is limited, as he can already have the business; that the current issue is amending the current conditions; that Condition No. 1 of the existing Conditions of Approval state that the use is to be for indoor storage purposes; that because of the outdoor display of golf carts, the Commission would need to amend that condition; that another current condition states there shall be no contracting work, office work or general business conducted on the site and that none of the units shall be occupied as a principal place of business; that the Applicant is requesting to change that condition as well; that existing Condition No. 5, may or may not apply, as it states that none of the units shall be used as contractor workshops; that he felt it would be worth clarifying if the Applicant can perform golf cart repairs or not, as that is similar to a workshop; that the Conditional Use request is not starting from square one, and the Application request is to work within an existing Conditional Use approval.

Mr. Mears questioned if the golf carts are stored outside and the hours of operation.

Mr. Hopkins questioned if they change and dispose of batteries.

Mr. Robertson stated because Beach Buggies, Inc. is only one business located within the industrial park, any changes made would impact the entire park; that he questioned if any other businesses were currently operating in that way and if the landlord was aware of the applied Conditional Use; that he wanted to ensure everyone understood that any amended conditions would cover all six existing buildings and the Application is an unusual situation.

Mr. Tribull stated some golf carts are moved outside, and are occasionally moved around; that they display golf carts in the front of the building during business hours; that they do not keep the golf carts

outside overnight; that all golf carts are brought indoors; that they also offer mobile services as well; that the hours of operation are proposed to be six days per week, from 9:00 am to 5:00 pm; that the hours will vary according to the season; that during the winter season, they do close earlier; that the business does not have gas-powered golf carts; that most neighborhoods require electric powered carts; that due to this, there is no storage of oil or hazardous chemicals; that they do provide battery changes, however, the battery leaves as a core; that he is unsure of the way the other businesses are operating; that Sweet Disposition Bakery is located at the park; that he believed the park is utilized more for as a place for contractors to go, and that his landlord was in attendance for the meeting.

The Commission found two people present in the room who wished to speak in support of the Application, and no one present in opposition.

Mr. Rick Tucker spoke in support of the Application. Mr. Tucker stated he is the landlord of the property; that he has been the landlord for two to three decades; that Mr. Tribull and Beach Buggies, Inc. could not be better tenants; that their impact on the property is minimal; that they rent large square footage unit; that he has known them for a long time; that they do a phenomenal job, and he is in favor of the Application.

Ms. Ellen McGee spoke in support of the Application. Ms. McGee stated she lives and operates a business in the area; that 19 years ago, when Mr. Tucker started an industrial park project, he applied for what the need was at the time; that the needs have definitely changed over the last 19 years; that the area does not have enough commercial and retail properties, and due to this, there is a definite need for projects like this with the increase in development.

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

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

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

In relation to C/U 2403 Beach Buggies, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

C/Z 1988 Jeffrey & Linda Babinski

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 0.75 ACRE, MORE OR LESS. The property is lying on the west side of Delaware Drive (S.C.R. 16C), approximately 566 feet south of Hickman Road (Rt. 16). 911 Address: N/A. Tax Map Parcel: 530-9.00-57.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's exhibits, the Applicant's Preliminary Site Plan, a letter submitted by the Applicant, a letter from the Department of Veteran Affairs, a letter from the Sussex County Engineering Department, the DelDOT Service Level Evaluation Response, the DelDOT Letter of No Objection, the Staff Analysis and the legal description of the property. Mr. Whitehouse stated that zero comments had been received for the Application.

The Commission found that Mr. Jeffery Babinski spoke on behalf of his Application. Mr. Babinski stated he resides on a property adjacent to the site; that the property is located along a short, dead-end road,

just outside the Town of Greenwood; that he and his wife purchased the property, to allow their daughter to live adjacent to them, and their daughter wants to place a single-wide manufactured home on the property for herself, and her dogs.

Chairman Wheatley questioned if there were other single-wide manufactured homes located within the surrounding area.

Mr. Babinski stated there were no other single-wide manufactured homes located within the surrounding area, as the particular area is zoned AR-1 (Agricultural Residential) and does not permit single-wide manufactured homes.

The Commission found one person in the room who wished to speak in support of the Application and no one present in opposition.

Mr. Charlotte Tarr spoke in support of the Application. Ms. Tarr stated she resides along Hickman Rd.; that she has known the Babinski family forever, as they have lived in Greenwood, at the same address for a long time; that their daughter is attending school, pursuing her education; that their daughter is an Army veteran; that it is imperative that their daughter live adjacent to her parents; that their daughter deserves it; that their daughter is ready to shop for her own modular home and they all respectfully requested the Commission grant favorable approval.

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

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

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

Mr. Robertson read Mr. Hopkins' prepared motion, per Mr. Hopkins' request.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1988 for Jeffrey & Linda Babinski to change the zone of their property from AR-1 (Agricultural Residential) to GR (General Residential) District for the following reasons:

1. Given the small size of the property, the Change in Zone to GR will not allow for any expansive or intensive uses on the property.
2. The site is very close to the municipal boundaries of the Town of Greenwood.
3. The Applicant seeks to rezone this property to place a single-wide manufactured home on the property.
4. The Change of Zone to GR will not adversely affect neighboring properties or area roadways. The Applicant has stated that the roadway currently does not have a lot of traffic, and any development of this property will not generate significant additional traffic.
5. Several neighbors appeared and testified in favor of this rezoning.
6. No parties appeared in opposition to the Application.

Motion by Mr. Hopkins, seconded by Mr. Wingate and carried unanimously to recommend approval of C/Z 1988 Jeffrey & Linda Babinski, for the reasons stated in the motion. Motion carried 5-0.

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

Mr. Mears voted yea on the motion for the reasons stated in the motion.

Ms. Wingate voted yea on the motion for the reasons stated in the motion.

Ms. Stevenson voted yea on the motion for the reasons stated in the motion.

Mr. Hopkins voted yea on his motion for the reasons stated in his motion.

Chairman Wheatley voted yea on the motion for the reasons stated in the motion.

ADDITIONAL BUSINESS

The Commission recognized Ms. Stevenson and Mr. Hopkins' service to Sussex County.

The Commission found that Mr. Martin "Marty" Ross wished to provide appreciation to Ms. Stevenson and Mr. Hopkins for their service to the County.

Ms. Wingate, Mr. Mears, Mr. Robertson, Chairman Wheatley, and Mr. Whitehouse provided their appreciation to Ms. Stevenson and Mr. Hopkins.

Meeting adjourned at 6:23 p.m.

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