

THE MINUTES OF THE REGULAR MEETING OF JUNE 23, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, June 23, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse advised the Commission that (S-22-16) Village Center – Commercial and Lands of Ethan & Glenda Knepp were requested by staff to be removed from the agenda; that the Application for Lands of Ethan & Glenda Knepp was withdrawn by the Applicant and the application for (S-22-16) Village Center – Commercial is to be brought back at a later meeting.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Agenda as revised. Motion carried 5 - 0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the May 26, 2022, Planning and Zoning Commission meeting as circulated Motion carried 5 – 0

OTHER BUSINESS

(2020-18) Sycamore at Seaway Chase (F.K.A. Woodlands II)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of a cluster subdivision consisting of thirty-three (33) single-family lots. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, January 7, 2021. The property is located on the southeast corner of Central Avenue (Route 84) and Bayard Rd. (Route 84). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Zoning District: AR-1 (Agricultural Residential District). Tax Parcel: 134-19.00-23.00. Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

(S-20-38 & C/Z 1858) Ashton Oaks RPC

Final Site Plan

This is a Final Site Plan for a Residential Planned Community (RPC) to consist of 178 apartment units to be located on a 14.845-acre parcel off Zion Church Rd. (Route 20). The Sussex County Council approved Change of Zone No. 1858 at their meeting of Tuesday, December 11, 2018, through Ordinance No. 2621. The Preliminary Site Plan was approved by the Planning & Zoning Commission at their meeting of Thursday, November 19, 2020. The Final Site Plan includes two (2) 32-unit, 4-story apartment buildings, three (3) 30-unit, 4-story apartment buildings, and one (1) 24-unit, 4-story

apartment building, with parking, amenities, and other improvements. The Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 533-11.00-82.00. Zoning: HR-1-RPC (High-Density Residential Zoning District, Residential Planned Community). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Final Site Plan. Motion carried 5-0.

(S-21-36 & C/U 2249) Mayapple Farm

Preliminary Site Plan & Landscape Plan

This is a Preliminary Site Plan & Landscape Plan for the development of forty-one (41) multifamily units (as a single-family detached condominium regime), a clubhouse and pool amenity, kayak pier, private roads, and open space to be constructed on a 20.91 acre +/- parcel of land. The site was the subject of a related Conditional Use Application, C/U No. 2249 to allow for multifamily use within the AR-1 District. The Sussex County Council approved the Conditional Use at its meeting of Tuesday, October 26, 2021, and the change was adopted through Ordinance No. 2806. The property is located on the southwest side of Williamsville Road (S.C.R. 395), approximately 0.76 mile southeast of Lighthouse Road (Route 54). The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 533-19.00-289.05. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Site Plan and the Preliminary Landscape Plan with final approval by the staff upon the receipt of all agency approvals. Motion carried 5-0.

(S-22-18 & C/U 2252) Cedar Grove Road Substation

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of Cedar Grove Road Substation, an electrical substation for the Delaware Electric Co-Op. The proposed use was approved as a Conditional Use (C/U No. 2252) by the Sussex County Council at their meeting of Tuesday, July 13th, 2021, via Ordinance No. 2788. The Plan's proposed improvements include a 200-square foot Control House, various electrical utility components, a primary access road, a maintenance access road, a nine (9) foot galvanized steel fence surrounding the development area, and landscaping to provide screening from adjacent properties. The parcel of 8.24 +/- acres is located on the southwest corner of the intersection of Cedar Grove Road (S.C.R. 283) and Plantations Road (S.C.R. 275) with access for ingress/egress from Cedar Grove Road. Tax Parcel: 334-12.00-2.00. Zoning: MR (Medium-Density Residential Zoning District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan with final approval by the staff upon receipt of all agency approvals. Motion carried 5-0.

Waters Edge Church

Preliminary Site Plan

This is a Preliminary Site Plan for the establishment of a 1-story 6,806 square foot proposed building, a 1-story proposed 1,506 sq. ft. building and other associated site improvements. The proposed 6,806 square foot building was approved for a variance of 23.48-ft from the required 60-ft front setback. The variance was approved by the Board of Adjustment through BOA Case No. 12679 at their meeting of Monday, April 18, 2022. The property is located on the north side of Broadkill Road (Route 16) and the east side of Reynolds Road (S.C.R. 233), approximately 0.75-miles southwest of the intersection of Zion Church Road (S.C.R. 235) and Broadkill Road (Route 16). Also, please note that there are five (5) existing parking spaces on the site which are currently located within the front yard setback. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-15.00-7.01. Zoning: CR-1 (Commercial Residential Zoning District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

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

Assawoman Lakes (F.K.A. Evergreen) RPC (C/Z 1900)

Revised Final Site Plan

This is a Revised Final Site Plan for the previously approved Assawoman Lakes Residential Planned Community (RPC) for an amendment to the Record Plan. Specifically, this revision includes a 1-ft strip transfer of land from parcel 134-16.00-51.00 to 134-16.00-52.00. This 1-ft strip of land was previously included within the forested buffer (for a total width of 21-ft) and is now being removed and conveyed, resulting in the buffer now achieving the required 20-ft buffer width as required under §99-5 of the Sussex County Code and Condition "L" of the Conditions of Approval. The Sussex County Council approved a Change of Zone Application (C/Z 1900) for the property at their meeting of Tuesday, March 17, 2020, and the change was adopted through Ordinance No. 2711. The property is located on the east side of Parker House Road (S.C.R. 362), approximately 0.35 mile south of Beaver Dam Road (S.C.R. 368). The Revised Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 134-16.00-51.00. Zoning: GR-RPC (General Residential District – Residential Planned Community). Staff are in receipt of all agency approvals.

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

(S-21-37 & C/U 2105) Lands of Thomas Engel

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Lands of Thomas R. Engel for the site to host Double E. Lawn Care, a commercial landscaping business owned by the Applicant. This use was approved as a Conditional Use (C/U No. 2105) by Sussex County Council at their meeting of Tuesday, December 5th, 2017, via Ordinance No. 2538. The parcel contains a single-family residential improvement as well as two 7,000 square-foot pole buildings to the rear of the parcel with access off Doddtown Road. The Plan proposes to utilize a portion of the parcel for operations associated with Double E. Lawn Care including outdoor parking and vehicle or equipment storage. The parcel of 25.156 +/- acres is located on the northwest side of Doddtown Road (S.C.R. 293), approximately (0.25) miles west of Harbeson Road (Route 5). The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-30.00-103.09. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting

agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Revised Preliminary Site Plan with final approval by the staff upon the receipt of all agency approvals. Motion carried 5-0.

(S-22-03) Steiner Road Industrial Park

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Lands of Steiner Land LLC for the construction of concrete central mixing and proportioning plant. The Applicant seeks Preliminary Site Plan approval for this Plan separate from the proposed “Building Materials Recycling & Sorting Facility” site to be located on the parcel adjacent immediately to the west. An existing fifty (50) foot wide Perpetual Cross Access Easement will serve as access for ingress/egress for both parcels. The proposed projects also share the same stormwater management facility. The parcel is 7.50 +/- acres and located on the east side of Steiner Road (S.C.R. 320) approximately 1,060 feet south of Lewes Georgetown Highway (Route 9) with approximately (486) feet of frontage on Steiner Road. Tax Parcel: 135-16.00-23.05 Zoning: HI-1 (Heavy Industrial Zoning District). Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan with final approval by the staff upon the receipt of all agency approvals. Motion carried 5-0.

(S-22-03) Steiner Road Industrial Park

Requested Determination of Permitted Use

Pursuant to the staff’s review of the Preliminary Site Plan for the site, the Applicant has requested the Planning & Zoning Commission review the type and nature of the proposed uses at the site in terms of (§115-110); Permitted Uses and “potentially hazardous uses” as described in (§115-110(C)). The Preliminary Site Plan proposes for industrial uses to include the following as described in the plan; a “Concrete Central Mixing and Proportioning Plant” and a “Building Materials Recycling and Sorting Facility.” Prior to any determination by the Director (§115-111), the Applicant has requested for Commission to consider if the proposed uses may be categorized under “similar industrial uses” as listed in (§115-110(C)). The parcels are a combined total of 15.0 +/- acres and are located on the east side of Steiner Road (S.C.R. 320) approximately 1,060 feet south of Lewes Georgetown Highway (Route 9). Tax Parcels: 135-16.00-23.05, 135-16.00-23.06 Zoning District: HI-1 (Heavy Industrial District).

Mr. Whitehouse advised the Commission that the plan was first introduced to the Commission at their meeting of May 26, 2022, where the Commission was requested to make a determination as to if the use described was a permitted use in an HR-1 (High-Density Residential) Zoning District; that the Commission made a decision on that item; that on June 9, 2022, staff received a letter on behalf of the Applicant, seeking clarification to the Commission’s decision in relation to whether concrete crushing was in the thought process of the Commission when making the motion, that the letter submitted was included within the Paperless Packet; that the Applicant’s representative was present for technical questions; that he does have a copy of the Zoning Code in relation to permitted uses within the HR-1 Zoning District, the Applicant’s submitted materials and presentation from the previous meeting in May

and he stated the Applicant was requesting clarification as to if the proposed use was permitted or not, as it does not specifically include concrete crushing.

The Commission found Mr. Tim Willard, Esq. was present on behalf of the Application; that the Applicants and Mr. Mark Davidson were also present; that when the previous deliberations were made, it seemed there was some misunderstanding; that there is no hazardous material coming to the property; that the HR-1 Zoning District does include permitted uses and materials within L-1 (Limited Industrial) Zoning District; that within these zoning districts, construction materials are permitted; that they argue their proposed use is similar, as it does not contain any hazardous materials; that in the previous deliberations two Commissioners made the comment that stone crushing would take place on the site; that they believed stone crushing was the reason for the denial; that stone crushing is not proposed and will not take place on site; that based on this fact, they are asking for clarification and/or reconsideration of the Application; that within the previously proposed PowerPoint, there is information as to how the operations are undertaken; that the operation is a sorting process of materials; that only electronic equipment is used for the sorting process; that there is water devices for dust which may occur; that the proposed use is heavy industrial for Sussex County; that the site is located within an isolated area; that they feel the proposed use is a need for Sussex County; that the proposed use is supported by the Comprehensive Plan; that the proposed use does meet the statute allowing the Commission to consider if the proposed use is permitted or not; that the operation is, once homes are demolished, the material is transported to the site on trucks; that once materials arrive to the site, the material is weighed and sorted out by material type; that there is no crushing of concrete involved in the sorting process and this process is a recycling operation.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the proposed use as a permitted use under Section 115-110 (C) of the Sussex County Zoning Code. Motion carried 5-0.

(2004-17) The Villages at Red Mill Pond South

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend Conditions of Approval for the Revised Final Subdivision Plan for The Villages at Red Mill Ponds South (2004-17) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 24th, 2019. On June 10th, 2022, staff received a formal request to amend Condition #11 of the Plan's approval. Due to recent revisions and updates to proposed amenities, the Applicant requests that Condition 11, which states, "*All amenities and recreational facilities shall be constructed and open for use by the residents of the development within 2 years of the issuance of the first building permit*" be amended. This standard AR-1 subdivision contains one-hundred and seventy-seven (177) single-family lots on 82.10 acres +/- and is located on the northeast side of Lewes Georgetown Highway (Route 9). Tax Parcel: 334-5.00-170.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Mears questioned if the Condition was typically based on the number of houses built rather than a particular time period.

Mr. Robertson stated typically the Condition is listed at around 50% completion.

Mr. Ring Lardner, with Davis Bowen and Friedel (DBF), stated he is not entirely familiar with the project, but DBF is representing the project; that he believed the intent of the letter is to request the

Condition of Approval to be within three years rather than the stated two years; that the believes the intention is to begin construction on the project, however the construction will not be completed within the two year window; that the Applicant is requesting a time extension to allow the clubhouse to be completed; that the residents currently living there are agreeable to the time extension for the construction of the clubhouse, while the builder continues construction of additional units on site, given the location of the clubhouse being further back, phasing plan, utilities and alike; that the amenity plans were submitted; that the amenity plans could not be approved due to the imposed Condition; that if the requested Condition were approved, the construction could commence; that if the Commission should approve the Condition, the site plan would be placed on an agenda for the Commission's consideration for the near future and upon approval, construction could begin.

Mr. Whitehouse advised the Commission submitted into the record was a petition signed by the residents of The Villages at Red Mill Pond expressing no objection to the Applicant's request for a time extension for the construction of the amenities.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the request to amend Condition 11 within Conditions of Approval to revise the wording to three years from two years, for The Villages at Red Mill Ponds South (2004-17). Motion carried 5-0.

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

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Autumndale (F.K.A. Fairmont) (2021-04) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On June 15th, 2022, staff received a supplemental request to amend Condition B of the Plan's approval. The Commission last reviewed this request at their meeting of Thursday, May 12th, 2022, where the Commission chose to take no action for further consideration of the proposal. The Applicant requests that Condition B, which states, "*The Final Site Plan shall confirm that at least 50 acres of the site remain as open space, with existing woodlands being preserved as "Non-Disturbance Areas"*", be amended to, "*The Final Site Plan shall confirm that 50 acres, more or less, of the site, remains as open space subject to final engineering.*" This amendment would allow for variations in the amount of open space provided subject to final engineering. This AR-1 cluster subdivision proposes one-hundred and four (104) single-family lots on 73.905 acres +/- and is located on the south side of Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Route 5) and Hollyville Road. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Robertson stated the Conditions of Approval imposed on subdivisions are not pulled out of thin air; that the Conditions are often based upon the data column listed on the Preliminary Site Plan, Exhibit Booklet and provided testimony; that there was basis for what was provided in the motion; that the subject request has never been presented before, however does not mean it is not a valid request; that Ms. Peet filed the request with a letter on June 14, 2022; that the letter explains the Applicant's concern of the potential change of open space, once the plan goes through the engineering process and State agency approvals; that the Applicant does not want to get hung up if the final open space is slightly under the amount of open space conditioned by the Commission; that the Commission has never had this type of request, however, he is not overly concerned as there is a back stop within the Code within Section 99-10 which states *every final plat shall be substantially in accordance with the approved preliminary plat, including any changes or additions required by the Commission as a conditions of its*

approval”; and if the Applicant were to come in with a substantially different final site plan, the Commission would have the authority to issue it back to a public hearing.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the request to amend the Conditions of Approval for Autumndale (F.K.A. Fairmont) (2021-04). Motion carried 5-0.

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

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Turnberry (F.K.A. Unity Branch) (2021-05) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On June 15th, 2022, staff received a supplemental request to amend Condition B of the Plan’s approval. The Commission last reviewed this request at their meeting of Thursday, May 12th, 2022, where the Commission chose to take no action for further consideration of the proposal. The Applicant requests that Condition B, which states, “*The Final Site Plan shall confirm that at least 65% of the site remains as open space*”, be amended to, “*The Final Site Plan shall confirm that at least 65%, more or less, of the site remains as open space subject to final engineering.*” This amendment would allow for variations in the amount of open space provided subject to final engineering. This AR-1 cluster subdivision proposes one-hundred and ninety-six (196) single-family lots on 135.524 acres +/- and is located on the east and southeast side of Hollyville Road, approximately 0.8 miles south of Hurdle Ditch Road (S.C.R. 290). Tax Parcels: 234-16.00-1.01, 1.02, 3.00, 4.00 and 5.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the request to amend the Conditions of Approval for Turnberry (F.K.A. Unity Branch) (2021-05). Motion carried 5-0.

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

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Preliminary Subdivision Plan for Lightship Cove (F.K.A. Fisher Road) (2021-11) as approved by the Planning and Zoning commission at their meeting of Thursday, December 9, 2021. On June 15th, 2022, staff received a supplemental request to amend Condition J of the Plan’s approval. The Commission last reviewed this request at their meeting of Thursday, May 12th, 2022, where the Commission chose to take no action for further consideration of the proposal. The Applicant requests that Condition B, which states, “*The Final Site Plan shall confirm that at least 54% of the site remains as open space,*” be amended to, “*The Final Site Plan shall confirm that 54%, more or less, of existing woodlands, subject to final engineering.*” This amendment would allow for variants in the amount of open space provided subject to final engineering. This AR-1 cluster subdivision proposes ninety-seven (97) single-family lots on 48.93 acres +/- and is located on the south side of Fisher Road (S.C.R. 262). Tax Parcel: 334-10.00-69.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Robertson stated that based on the letter submitted by Ms. Peet, the Applicant is requesting to amend Condition B to read, “*the final site plan shall confirm that 54% more or less of the site will remain as open space, with 7.5 acres more or less of the existing woodlands, subject to final engineering.*”

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the request to amend the Conditions of Approval for Lightship Cove (F.K.A. Fisher Road) (2021-11). Motion carried 5-0.

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

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Miralon (F.K.A. Cool Spring) (2021-12) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. On June 15th, 2022, staff received an updated supplemental request to amend Condition B, Condition E and Condition J of the Plan's approval. The Commission last reviewed this request at their meeting of Thursday, May 12th, 2022, where the Commission chose to take no action for further consideration of the proposal. The Applicant requests that Condition B, requiring "*The Final Site Plan shall confirm that at least 50% of the site remains as open space,*" be amended to "*The Final Site Plan shall confirm that at least 50%, more or less, of the site remains as open space subject to final engineering*", that Condition E be deleted in its entirety and replaced with "*As recommended by D.N.R.E.C., a forest assessment shall be conducted to determine if mature forest areas exist on-site and to identify any mature trees,*" and that a portion of Condition J, in relation to the provision of amenities, be amended to "*Amenities including a pool and pool house shall be constructed and open to use by residents of this development on or before the issuance of the 71st residential building permit.*" These amendments would allow for variations in the amount of open space provided subject to final engineering, remove the requirement that a forest assessment be provided with the Final Site Plan, and would require amenities to be provided by 60% of buildout. This AR-1 cluster subdivision proposes one-hundred and forty-four (144) single-family lots on 72.02 acres +/- and is located on the northeast side of Cool Spring Road (S.C.R 290). Tax Parcels: 234-5.00-37.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the request to amend Condition B, Condition E, and Condition J of the Conditions of Approval for Miralon (F.K.A. Cool Spring) (2021-12). Motion carried 4-1.

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

OLD BUSINESS

2021-06 – Coral Lakes (F.K.A. Coral Crossing)

A Coastal Area cluster subdivision to divide 152.32 acres +/- into 315 single-family lots to be located on a certain parcel of land and lying and being in Indian River Hundred, Sussex County. The property is located on the southwest side of Robinsonville Road (S.C.R 277) approximately 0.65 mile south of Kendale Road (S.C.R. 287) Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which was originally heard before the Planning & Zoning Commission on January 27, 2022.

Mr. Robertson stated the Application was previously considered and voted on by the Commission; that prior to that vote, he explained the law in Delaware regarding subdivisions; that a motion to approve the

subdivision was made and seconded, but it was denied by 4 votes against it; that the denial was appealed to County Council by the Applicant for several reasons, including the failure to provide reasons for the “no” votes and because the application complied with the Subdivision Code; that County Council decided that *“the matter be remanded to the Commission for further consideration of the entire record, all evidence and facts of this Application in open session, to consult with its legal counsel, take a public vote thereon, and in accordance with 9 Del. C. §6811 and the Commission’s Rules of Procedure, Section 15.4, to issue a written decision containing the findings and conclusions that are consistent with the law.”*; that for the benefit of not just the Commission, but also the public, he wanted to take the time to reiterate the well-settled law on subdivisions here in Delaware; that he explained prior to the last vote, the Delaware Supreme Court in the case of *Tony Ashburn & Son v. Kent County Regional Planning Commission* reaffirmed the law as it applies to subdivisions that had been settled in earlier cases; that *“When people [own] land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and residents. To hold otherwise would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the ordinances. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning ordinances.”* *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm’n*, 962 A.2d 235, 241 (Del. 2008) (citing *DiFrancesco v. Mayor and Town Council of Elsmere*, 2007 WL 1874761, at *3 (Del. Super. June 28, 2007)); that in the earlier case of *East Lake Partners v. City of Dover Planning Commission*, the Delaware Superior Court held that, *“While the desires of the public in respect to uses are pertinent to the zoning of land when the initial uses for land are established, such evidence is not pertinent to site plan review, except insofar as it is limited to proposed conditions and safeguards to be imposed on the plan itself.”*; that *“The Planning Commission has no power to reject a site plan because the residents do not want the land used for a project that is a permitted use under the applicable zoning regulation.”*; that The Superior Court also explained that *“The Planning Commission may not reject a site plan for a permitted use on the grounds that the project will adversely affect the general neighborhood.”* *East Lake Partners v. City of Dover Planning Commission*, 655 A.2d 821 (Del. Super. 1994); that The Superior Court explained the reason for this in *Delta Eta Corp. v. City Council of Newark*, where it said that finding otherwise *“would turn the concept of a planned logical zoning process into one left to political whim”* that *“would foster corruption and make the zoning process meaningless.”*; that it would also *“be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning ordinance.”* *Delta Eta Corp. v. City Council of Newark*, 2003 WL 1342476 (Del. Super. March 2003); that if a subdivision complies, it must be approved; that these cases have also stated that the Commission has the ability to impose reasonable conditions if those conditions are based upon factors contained in the record; that unfortunately, but understandably, the public does not generally know about this well-established Delaware law governing subdivisions; that the public generally assumes that the Commission has total discretion when it comes to subdivisions; that instead, as he explained before, the discretion comes at the time land is rezoned; that rezoning sets the rules that must be followed by a subdivision application or for any other use; that the same holds true for the Zoning Code and Subdivision Codes; that County Council, following the Commission’s recommendation, has the discretion to set the rules in these Codes that must be followed; that if they are followed, Delaware law states a subdivision must be approved; that it goes beyond subdivisions; that as the Court said in the Delta Eta and East Lake Partners decisions, such discretion *“would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred*

on their land under the ordinances.”; that if this rule was not in place, improper discretion could be applied to any number of permitted uses, to a deny a business that is otherwise permitted just because the public doesn’t want it, or even the right of a homeowner to build a permitted house because neighbors don’t want it built; that if the Zoning Code states that it is allowed on a person’s property, then it must be permitted to occur; that a permitted subdivision is no different; that as the Court stated in the Delta Eta case, if a permitted use, whether it is a permitted subdivision, a permitted home, a permitted business or even a permitted school can be denied on an ad hoc basis because of public opposition, “*the zoning process would be meaningless*”; that under well-established Delaware law, if a subdivision satisfies the requirements of the Zoning Code and Subdivision Code, it must be approved, subject to reasonable conditions; that he wanted to clarify one aspect of the design standards that apply to this subdivision, which is in the Coastal Area according to Sussex County’s Future Land Use Map; that the Application for this subdivision was filed with Sussex County on November 20, 2020; that at that time, the “superior design” requirements of Section 115-25 of the Zoning Code did not apply to cluster subdivisions in the Coastal Area; that Ordinance 2764 was adopted on February 2, 2021, making the superior design standards apply to all new cluster subdivisions in the Coastal Area; that since Coral Lakes pre-dated the Code Amendment, the “superior design” requirements of Section 115-25 do not apply to it and based upon the law that he described, he requested Mr. Whitehouse confirm whether Subdivision 2021-06 Coral Lakes complied with the Subdivision and Zoning Code.

Mr. Whitehouse confirmed the subdivision 2021-06 Coral Lakes did comply with the Subdivision Code and the Zoning Code.

Mr. Hopkins stated that basically, Sussex County Council makes the rules and the Planning and Zoning Commission must follow those rules.

Mr. Robertson stated that attorneys have requested to be told the rules, so they can ensure they comply; that County Council makes the rules, which are relayed in the Zoning Code and Subdivision Code; that if an application comes forward and complies with the rules, it would be considered a permitted use and needs to receive approval; that people want to be involved in the process; that this is the part the public does not necessarily understand; that at the time of a subdivision public hearing, it is almost too late in the process; that the time to get involved is when the Comprehensive Plan is updated every 10 years; that the Comprehensive Plan sets the themes and goals for Sussex County; that one would need to then get involved in changes to the Zoning Code and/or Subdivision Code; that the Codes are what sets the rules for the Commission and the subdivisions then comply to those rules; that there was a year and a half of hearings where information was received for the Comprehensive Plan; that there was a consultant responsible for gathering the received information and he does feel that the majority of the received information did make it into the Comprehensive Plan.

Mr. Hopkins stated that he felt there is a misconception regarding the Comprehensive Plan; that the Planning & Zoning Commission could have done a better job and he stated the Commission spent a lot of time and effort on the Comprehensive Plan.

Mr. Robertson stated with the Commission’s permission, he had prepared a motion to read into the record for the Commission’s consideration.

Mr. Robertson read the motion recommending the Commission grant preliminary approval for 2021-06 Coral Lakes (F.K.A. Coral Crossing) with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. This Application was previously considered by the Commission. Although a motion to approve the subdivision was made and seconded, it was denied by a vote of 1 member in favor, and 4 members against it. That denial was appealed for several reasons, including the failure to provide reasons for the “no” votes and because the application complied with the Subdivision Code. Following the appeal hearing that occurred before Sussex County Council pursuant to Section 99-39 of the Sussex County Code, County Council decided that “the matter be remanded to the Commission for further consideration of the entire record, all evidence and facts of this Application in open session, to consult with its legal counsel, take a public vote thereon, and in accordance with 9 Del. C. §6811 and the Commission’s Rules of Procedure, Section 15.4, to issue a written decision containing the findings and conclusions that are consistent with the law.”
2. As our attorney has advised, subdivisions like this one are governed by the Subdivision and Zoning Codes. Delaware law and the Delaware Courts mandate that if a subdivision meets the requirements of the Subdivision and Zoning Codes then it is permitted.
 - A. For example, in the case of *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Commission*, the Delaware Supreme Court held that “When people [own] land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and residents. To hold otherwise would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the ordinances. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning ordinances.” *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm’n*, 962 A.2d 235, 241 (Del. 2008) (citing *DiFrancesco v. Mayor and Town Council of Elsmere*, 2007 WL 1874761, at *3 (Del. Super. June 28, 2007)).
 - B. In *East Lake Partners v. City of Dover Planning Commission*, the Delaware Superior Court held that “While the desires of the public in respect to uses are pertinent to the zoning of land when the initial uses for land are established . . . such evidence is not pertinent to site plan review, except insofar as it is limited to proposed conditions and safeguards to be imposed on the plan itself.” And that, “The Planning Commission has no power to reject a site plan because the residents do not want the land used for a project that is a permitted use under the applicable zoning regulation.” The Superior Court also explained that “The Planning Commission may not reject a site plan for a permitted use on the grounds that the project will adversely affect the general neighborhood.” *East Lake Partners v. City of Dover Planning Commission*, 655 A.2d 821 (Del. Super. 1994).
 - C. In the case of *Delta Eta Corp. v. City Council of Newark*, this was all summarized by the Delaware Superior Court when it stated that the result of allowing the denial of a compliant subdivision “would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning ordinance. *Delta Eta Corp. v. City Council of Newark*, 2003 WL 1342476 (Del. Super. March 19, 2003).

3. For the reasons stated in this Motion, with the exception of the “bonus density lots”, this application complies with the Subdivision and Zoning Codes, therefore preliminary approval must be granted in part.
4. This Application was filed on November 20, 2020, Ordinance # 2764, which incorporated the “superior design” requirements into subdivisions in the Coastal Area was adopted on February 2, 2021, after this subdivision was submitted to Sussex County. Therefore, the “superior design” requirements of Section 115-25 of the Sussex County Code do not apply to this subdivision.
5. The Applicant is seeking approval of a clustered subdivision of 315 Lots within the AR-1 Zoning District and the Coastal Area. This includes 11 “Bonus Density” lots that may be approved under Section 115-25B (3).
6. There was evidence in the record that there are jurisdictional wetlands on the property and the property does contain some ground that is regularly wet. This is supported by the soil information in the record provided by DNREC. While the Zoning Code does not prohibit development of wooded areas it also does not mandate the approval of bonus density lots that will cause the removal of additional forest. It is illogical to approve bonus density lots that remove forested areas here and receive money to preserve open space somewhere else. Elimination of these 11-bonus density lots would provide further protection for the wetlands and preserve more woodlands within this subdivision.
7. The proposed subdivision without any bonus density lots will have no more than 304 lots on 152.34 acres.
8. With the elimination of the bonus density lots and subject to the conditions imposed by this Preliminary Approval, the project complies with the Subdivision and Zoning Codes. The subdivision will satisfy the permitted density within the AR-1 Zone.
9. The proposed development will comply with all DelDOT roadway entrance requirements. It will be part of the Henlopen Transportation Improvement District.
10. The proposed subdivision meets the purpose and standards of the Subdivision Code.
11. Section 99-9C of the Subdivision Code requires the Commission to consider 17 different items relating to the site plan. While the Applicant has addressed the requirements of Section 99-9C of the Code, there are conditions of this approval that are based upon those 17 items.
12. The subdivision proposes to contain approximately 75 acres of open space and more than 30% of this will be contiguous open space.
13. The project will be served by central water and sewer.
14. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is permissible in this Area according to the Plan.
15. This subdivision preserves a substantial amount of open space and there are buffers along its perimeter that will include the preservation of trees and other vegetation within that buffer area.
16. This preliminary approval is subject to the following:
 - A. There shall be no more than 304 lots within the subdivision. The eleven-bonus density lots are denied.
 - B. The area where lots 182 through 186 and the Waverly Lane cul-de-sac are located on the preliminary site plan shall remain undisturbed. This area is adjacent to the jurisdictional wetlands, and this will preserve the existing forest in that location. Lots 1 through 5 and Lot 57 shall be eliminated to provide a greater separation between the subdivision lots and Robinsonville Road. No lots shall contain any Federal or State wetlands. All Federal or State wetland lines shall be clearly shown on the Final Site Plan.

- C. The Final Site Plan shall confirm that at least 30% +/- of the site's open space is on one contiguous tract of land.
- D. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
- E. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- F. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- G. There shall be a buffer that is at least 25 feet wide from all non-tidal wetlands. There shall be a minimum disturbance of trees and other vegetation within these buffer areas. Where trees currently exist in these buffer areas, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. The "Limits of Disturbance" shall be indicated on the Final Site Plan.
- H. The development shall comply with all DeIDOT entrance and roadway improvement requirements. The development shall also comply with the payment of all required fees associated with the Henlopen Transportation Improvement District.
- I. Sidewalks and walkways shall be installed as shown on the Preliminary Site Plan with a connection to the DeIDOT multi-modal path. A streetlighting system that provides lighting in a downward direction with minimal up lighting shall be provided. No lights shall be installed along Waverly Drive, Summer Breeze Lane, Coral Lakes Drive, and Pinegrove Lane nearest Aintree Drive in the adjacent development to mitigate glare into that development.
- J. Amenities including a pool and clubhouse shall be constructed and open to use by residents of this development on or before the issuance of the 200th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- K. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- L. Street design shall meet or exceed Sussex County standards.
- M. Road naming and addressing shall be subject to the review and approval of the Geographical Information Office (F.K.A. Sussex County Mapping and Addressing Department).
- N. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and 7:00 a.m. through 2:00 p.m. on Saturdays. 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.

- O. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- P. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. Both of these documents shall include a similar notice that (1) the site is adjacent to an airfield and the activities and noise that may occur there, and (2) that hunting activities may also occur on nearby properties.
- Q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- R. If any gravesites are found within the development, the Applicant shall immediately notify the Delaware State Historic Preservation Office and follow the requirements that Office.
- S. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried to grant preliminary approval of 2021-06 Coral Lakes (F.K.A. Coral Crossing) for the reasons and conditions stated in the motion. Motion Carried 3-1. Ms. Stevenson abstaining.

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

Mr. Hopkins stated he did not agree with the motion based on his concern of the wetland area.

Ms. Stevenson stated she chose to abstain from voting; that she was not opposed to the property being developed, even at the proposed density; that she did have serious concerns with the site plan; that testimony and photos were presented during the public hearing showing the wet swampy area of the tract of land that had been marked as a non-tidal wetland; that the Office of State Planning in the PLUS review stated, *“In addition, as noted in the DNREC comments below, the newest project application proposes to disturb/fill upwards of 25 acres of non-tidal wetlands. Only 5 acres of non-jurisdictional wetlands (under the new ruling) will remain, with no wetland permitting or wetland mitigation required. Regardless of new federal permitting standards, these non-tidal wetlands provide significant flood attenuation, water quality benefits, and habitat for plant and animal species. Filling these wetland areas, then building homes and infrastructure upon them, will directly result in adverse drainage and flooding impacts for future residents.”*; that DNREC also commented, *“Poorly drained soils (Hydrologic Soil Group C/D) have been identified across much of the site. These soil types are typically not conducive to utilizing infiltration stormwater Best Management Practices such as*

bioretention and infiltration basins, which must meet minimum infiltration requirements.”; that further, DNREC recommended, “For improved stormwater management, preserve existing trees, wetlands and passive open space”; that DNREC’s overall recommendation was to revert to the 2019 plan for this property; that although the senior landscape designer for GMB countered that the wetlands were determined to be “isolated with no connection to Navigable Waters of the U.S.”; that as a lifelong resident of Sussex County, one who has lost a shoe or two when stepping into one of these swamps and sinking up to my knee, she agreed with the DNREC assessment; that the developer has not taken the local private airstrip into consideration in their design; that by doing so, they might be setting up future residents for unsafe conditions and certainly for nuisance sound; that in previous applications for the adjacent property, the design was altered, at the request of the Planning Commission, to take flight patterns into consideration; that this plan is a perfect example of the failure of our County Ordinances; that not because they do not stop the development, but because they do not provide the flexibility to leave a swamp alone and still build to permitted density; that as part of this vote, she again asked the Council to consider starting a group to update Sussex County Ordinances; that although she was not allowed to add traffic, impacts on schools, fire, and ambulance services into my decision, she does live here and her vote is not to vote.

Ms. Wingate stated that she votes yea based on the extensive explanation by Council and the imposed Conditions stated in the motion.

Mr. Mears stated that he had originally voted against the Application, as he had a concern to the trees, the wetlands, the flooding, etc.; that unfortunately, as explained by Council, the Application does comply with the Subdivision Code and Zoning Code, and therefore bringing him to vote to approve the Application based on reasons stated in the motion.

Chairman Wheatley stated that he votes to approve based on the reasons stated in the motion and for the fact the Commission must honor the rule of law as it is written.

C/U 2295 Bones & Sons Heating & Air

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR AND OUTDOOR STORAGE OF HEATING AND COOLING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 4.03 ACRES, MORE OR LESS. The property is lying on the east side of Conrail Road (S.C.R. 546), approximately 606 feet south of the intersection of Hearn's Pond Rd (S.C.R. 544). 911 Address: 22135 Conrail Road, Seaford, DE. Tax Parcel: 331-3.00-129.07.

The Commission discussed the Application which had been deferred since June 9, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2295 Bones & Sons Heating & Air for an HVAC repair business with outdoor storage of heating and cooling equipment on land zoned AR-1 based on the record made during the public hearing and for the following reasons:

1. The applicant operates an HVAC repair business on the site. It evolved from a home occupation to the point where a Conditional Use is now required. This Conditional Use will bring the use into compliance with the zoning code.

2. As part of the HVAC repair business, the Applicant keeps damaged, replaced, and worn-out HVAC equipment on the site to recycle the various metal parts contained in them.
3. The use will not have an adverse impact upon neighboring properties or area roadways.
4. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways.
5. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County.
6. The Applicant has stated that they reside at the property and will continue to do so as part of this Conditional Use.
7. No parties appeared in opposition to the application.
8. This recommendation is subject to the following conditions:
 - A. The property shall be used for an HVAC repair business in addition to the Applicant's residence. As part of that Business, the temporary storage of used HVAC equipment shall be allowed so that it can be recycled.
 - B. There shall be no retail sales of HVAC equipment from the property.
 - C. The site shall not be permitted to become a junkyard, which requires separate zoning and other approvals. The used HVAC equipment shall be kept within a fenced and screened area, and none of it shall be permanently stored. The Applicant shall only store HVAC equipment it obtains as part of its repair and installation business. No HVAC equipment shall be brought to the site by other contractors, businesses, or individuals other than the Applicant and its employees.
 - D. No more than 1,600 square feet on the site shall be set aside for this temporary storage area. This area shall be shown on the Final Site Plan.
 - E. Any outdoor lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - F. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways. The dumpster location shall be shown on the Final Site Plan.
 - G. The Applicant shall comply with any DelDOT requirements for entrance and roadway improvements.
 - H. Any violation of these conditions of approval may result in the termination of this Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2295 Bones & sons Heating & Air for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/U 2296 Michael Milligan

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOWING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK

HUNDRED, SUSSEX COUNTY, CONTAINING 3.078 ACRES, MORE OR LESS. The property is lying on the east side of Jestice Farm Road (S.C.R. 449A), approximately 0.31 mile south of Johnson Road (S.C.R. 447). 911 Address: 31531 Jestice Farm Road, Laurel. Tax Parcel: 232-19.00-12.02.

The Commission discussed the Application which had been deferred since June 9, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2296 Michael Milligan for a towing business based on the record made during the public hearing and for the following reasons:

1. Although characterized as a towing business, the Applicant operates an impound yard on this property. As a result, it does not generate customer traffic in the way that a typical towing operation would. Cars are brought in, stored for a short time, and then hauled out. No maintenance or repairs occur onsite.
2. The towing business is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or nearby roadways.
3. The Applicant resides on the property and the impound yard is screened from view. The Applicant intends to keep this primarily residential appearance.
4. The use as a towing business and impound yard is of a public or semi-public character and it is a service that is relied upon by banks, financing companies, and other businesses that require the towing and impounding of vehicles.
5. No parties appeared in opposition to this application.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The Applicant has stated that no sign is required or needed.
 - B. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
 - C. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - D. No repairs shall be performed on the site.
 - E. No junked, unregistered, or permanently inoperable vehicles or trailers shall be stored on the site.
 - F. There shall not be any parking in the front yard setback.
 - G. The impound and parking areas shall be shown on the Final Site Plan and marked on the site itself. Vehicles shall only be parked within these designated areas.
 - H. The perimeter of the impound area shall be screened from the view of neighboring properties with a fence or vegetation. This screening shall be shown on the Final Site Plan.
 - I. No cars shall be sold from the property.
 - J. Any violation of these conditions may be grounds for termination of this Conditional Use.
 - K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2296 Michael Milligan for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/Z 1958 Boardwalk Development, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS. The property is lying on the north and northeast side of Banks Road (S.C.R. 298), approximately 0.49-mile southeast of John J. Williams Highway (Rt. 24). 911 Address: N/A. Tax Parcel: 234-17.00-165.00.

The Commission discussed the Application which had been deferred since June 9, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1958 Boardwalk Development, LLC, for a Change in Zoning from GR General Residential to a GR-RPC based upon the record and for the following reasons:

1. The property is currently zoned GR. This would simply apply the RPC zoning overlay to the plan.
2. GR-RPC Zoning is also consistent with the adjoining Dogwood Lane development, which has a density of 9.32 units per acre.
3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
4. With the conditions and stipulations placed upon it, the RPC designation is appropriate since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large, wooded buffers on both sides of the site. There will also be amenities along the water available to the entire community.
5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically infill development, with a density similar to what exists in the immediate area.
6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.
7. According to the County’s current Comprehensive Plan, the project is in a Developing Area.
8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
9. No parties appeared in opposition to the application.
10. This recommendation is subject to the following conditions:
 - A. The maximum number of lots shall not exceed 54 single-family lots.
 - B. A Homeowners Association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas.
 - C. All entrances, intersections, interconnections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements.
 - D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The

Developer shall comply with all requirements and specifications of the County Engineering Department.

- E. The RPC shall be served by central water.
- F. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- G. Interior street design shall meet or exceed Sussex County's Street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.
- H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.
- I. As stated by the Applicant in the previously approved RPC for this property that was the same as this application, all amenities shall be completed prior to the issuance of the 27th Building Permit.
- J. A 20-foot-wide vegetated buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- K. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
- L. Road naming and addressing shall be subject to the review and approval of Sussex County Geographic Information Office (F.K.A. Mapping and Addressing Department).
- M. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- N. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a Lot Grading Certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- O. 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 Saturday. 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.
- P. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1958 Boardwalk Development, LLC. Motion carried 5-0.

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

PUBLIC HEARINGS

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

2021-20 Lands of John J. Hamsted – A standard subdivision to divide 5.034 acres +/- into 5 single-family lots, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the west side of Chaser Lane a private street, off of Calhoun Road (S.C.R. 621), approximately 1,100 feet north of Rust Road (S.C.R. 635). Tax Parcels: 130-6.00-82.04 & 130-6.00-82.22. Zoning: GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Subdivision Plan, the Soil Feasibility Study, a letter from Sussex County Engineering Department Utility Planning Division, a letter from the Applicant requesting a waiver from the topographic contour requirements, and from the forested buffer requirements and zero comments.

The Commission found that Mr. John J. Hamsted spoke on behalf of his Application; that he feels the Application is fairly straightforward; that the property is off Calhoun Rd.; that the plan shows as five lots; that one of the lots was previously developed with a dwelling on it; that the request is for four vacant lots; that it is open land with a buffer located in the back; that there are no lots located to the right of the property; that currently, it is an open field; that there would be two houses proposed to be located adjacent to the existing community to the left; that there is a buffer between properties which already exists and the existing line of woods is not to be disturbed.

Mr. Whitehouse advised the Commission that the waivers requested from the Applicant were from the topographic contour requirement and the forested buffer requirement.

Ms. Stevenson questioned if the Applicant submitted a waiver to the road requirements.

Mr. Hamsted stated he would like to request a waiver to the road requirements.

Mr. Whitehouse stated the submitted letter requesting waivers did include a request to waive the Sussex County Street Construction requirement due to the minimal number and size of the lots.

Mr. Hopkins stated the existing driveway looked to be well maintained and he questioned who was responsible for keeping the driveway maintained.

Mr. Hamsted stated that he owns all the properties along the driveway; that he rents those properties and he performs all the maintenance to the driveway.

Ms. Stevenson questioned who would be responsible for roads should Mr. Hamsted choose to no longer perform the road maintenance; that she requested an agreement be put in place to avoid any future issues and she questioned if Mr. Hamsted believed his proposed subdivision would have any negative impact on schools, local traffic, local water, or waterways.

Chairman Wheatley questioned if the lots were proposed to have well, and septic placed.

Mr. Hamsted stated that in that circumstance he could no longer maintain the property, something would need to be sold; that he currently owns all the lots; there are agreements in place allowing him to maintain the property; that there is one entrance to the proposed subdivision; that there are children who attend school at the properties now; that he assumed any future children would as well; that the proposed lots are large; that the average size lot on the street is an acre or more and the lot size provides a lot of area for water runoff and the lots are proposed to have well and septic, as the site work had already been performed.

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

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

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

Mr. Hopkins moved that the Commission grant preliminary approval of 2021-20 John J. Hamsted based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 5 lots on 5.034 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings, or community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. The subdivision shall be served by private wells and individual on-site septic systems. The Applicant has provided the septic feasibility statements for each of these proposed lots.
7. The Application has adequately addressed the items in Section 99-9C of the Sussex County Subdivision Code.
8. Given the small number of lots and the design of this subdivision, it is appropriate to grant a waiver from the street design requirements, the forested buffer requirements, and the requirements of showing the topographic contours of the property.
9. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 5 lots within the subdivision.
 - B. The stormwater management system shall meet or exceed the requirements of the State and County.

- C. All entrances shall comply with all DelDOT's requirements.
- D. The Final Site Plan shall contain the maintenance obligations for the roadway serving these lots
- E. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to grant preliminary approval for 2021-20 Lands of John J. Hamsted. Motion carried 5-0.

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

Chairman Wheatley stated the applicant had requested to combine the presentations for the Ordinance, C/Z 1949, and C/U 2304 as they are all related Applications of J.G. Townsend Jr. & Co. and he stated the motions for the three applications would be made separately.

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that the request was submitted on May 21, 2021, to amend the Future Land Use Map Element for the entire parcel, as it is currently located within a Commercial Area and Coastal Area; that the requested amendment is to change the current Commercial Area to be entirely within the Coastal Area; that submitted into the record was the Applicant's Request Form, Exhibit Booklet, PLUS comments which were received on July 22, 2021, the Applicant's response to the PLUS comments and five letters.

C/Z 1949 J.G. Townsend Jr. & Co.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, Conceptual Site Plan, Environmental Assessment, Public Facility Evaluation Report, Staff Analysis, Traffic Impact Study, DelDOT's response to the Traffic Impact Study, a letter from Sussex County Engineering Department Utility Planning Division, 20 letters in opposition and a written petition of 156 signatures.

C/U 2304 J.G. Townsend Jr. & Co.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS. The property

is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, Conceptual Site Plan, Environmental Assessment, Public Facility Evaluation Report, Staff Analysis, Traffic Impact Study, DelDOT's response to the Traffic Impact Study, a letter from Sussex County Engineering Department Utility Planning Division, PLUS comments, the Applicant's response to the PLUS comments, 20 letters in opposition; that the 156 signature petition did not specifically refer to both Applications and was submitted under the other record.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, and Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc.; that he requested to make a correction for the records in respect to C/Z 1949 and C/U 2304; that it was indicated the Traffic Impact Study was undertaken by the Applicant; that the Applicant did not undertake a Traffic Impact Study; that DelDOT included a recent Traffic Impact Study in their response to the Service Level Evaluation Request; that the provided Traffic Impact Study was previously performed to the Belle Terre Community; that the site is known as the "Howeth Property"; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from Howeth Family; that historically the Howeth Farm was much larger than it currently is; that in 2014 the Howeth Farm was as more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware on behalf of the Delaware State Police, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the results of those discussions was a minor subdivision plan; that the minor subdivision was recorded in 2014; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek Elementary School; that Parcel B was conveyed to the State of Delaware; that it is now the home of Troop 7; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the south is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that the other surrounding area is located within the Coastal Area; that the Coastal Area is one of the seven Growth Areas for Sussex County; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that 2/3 of the property is shown as Commercial; that 1/3 of the property is shown in the Coastal Area; that the Applicant's intention is to have the entire property located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on

the Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24; that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that there was three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation to the Coastal Area for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that each set of townhomes contains six units; that 14 townhomes are proposed across the site; that the project was reviewed during the PLUS process; that in Summer 2021 the Future Land Use Amendment request was reviewed by the Office of State Planning Coordination through the PLUS process; that the comments of no objection made by the Office of State Planning Coordination was included as part of the record; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in their comments “ *in Investment Level 2 areas, like Investment Level 1 areas, State investments and polices should support and encourage a wide range of uses and densities* ” and “ *Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable* ”, which ensure the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the County Code states “ *while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)* ”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that less than 10% of the issued building permits were for multi-family structures; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concern; that the proposed buffer to the wetlands exceeds Sussex County’s recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states *that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units*; that the next Section it states *that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density*; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and employment centers; that the project is located along RT. 24, which is a major collector road; that the project is located at a signalized

intersection on Rt. 24; that Rt. 24 does have DART transportation, with a Rehoboth, Longneck and Millsboro DART connection; that because the project is located within the TID, a fee per unit is required as part of the project's contribution to DelDOT; that although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft. and was granted a Conditional Use Approval; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas which are expected to become generally urban in character, which is a good description of Rt. 24; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that institutional and industrial uses may also be appropriate in the Commercial Zoning District; that the current Application proposes a far less intensive use than the potential permitted uses under Commercial Zoning; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible for to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many school which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that Chapter 8 of the Comprehensive Plan indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requested approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes; that he did submit proposed Findings of Fact and Conditions of Approval for the Change of Zone Application and the Conditional Use Application; that one of the proposed requirements is that there must be a Property Owners Association to care for amenities; that it is proposed that the amenities would be constructed by the seventh building permit and each building will receive a building permit for all six units within it; that in reality, the amenities would be completed by the 42nd building permit when considering per units.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group

effort between DelDOT and Sussex County; that the agreement was approved on October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2020 was \$341,796.00; that the fee does increase annually on January 31st; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the assumed land use was underestimated as it was assigned 37 single-family homes; that for the current Application they were able to stay within the perimeters for traffic; that the vehicle trips generated by townhouses is less than those generated by single-family homes; that this is the reasoning DelDOT considered the project consistent with the TID; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that the wetlands are located along the common boundary line of the site and the Saddle Ridge Community; that an approved Jurisdictional Determination was completed by the U.S. Army Corp of Engineers; that Mr. Edward Launay, with Environmental Resources did prepare an Environmental Review for wildlife habitat considerations; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that the Monarch Butterfly was located onsite; that the site does not have the proper vegetation to support the Monarch Butterfly, therefore it was assumed that the site was not the home for the Monarch Butterfly; that within DNREC's Fish and Wildlife comments from the PLUS review mention three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site; that it was Mr. Launay's opinion that the development of the Howeth Property, now known as School Lane, will not adversely impact the amphibious species of State concern; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval for Love Creek Elementary School the stub was connect to the parcel; that this allowed for interconnectivity, providing one access onto Rt. 24; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that the Application was submitted prior to the adoption of the recent Buffer Ordinance; that the proposed buffer exceeds the requirement of the recently adopted Buffer Ordinance; that the townhouses will be fee simple lots, meaning the lots will be owner occupied; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that currently there are two dead-ends proposed on Road B and Road C on the Site Plan; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of "School Lane" as well as the road names; that proposed amenities are a pool house, pool, centralized mailbox and a sports field area; that the proposed open space for the project is 11.42-acres, or 52% of the project site; that the project will be served by Tidewater Utilities,

Inc. for water services; that Sussex County will provide sanitary sewer services; that they have received Willing and Able to Serve letters from Tidewater Utilities, Inc., Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant's response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.

Ms. Stevenson questioned how parking is proposed for the project and if additional parking could be added to Road A on the west side.

Mr. Lardner stated each lot will have two parking spaces per unit, via the driveway or the garage; that they have provided overflow parking throughout the project; that they have exceeded the two-unit per lot requirement, and he stated they could consider additional options to add parking to the area Ms. Stevenson mentioned.

Chairman Wheatley advised the Commission that Mr. Bill Brockenbrough, County Coordinator with DelDOT was present for questioning via teleconference; that he requested Mr. Brockenbrough explain how the entrance came to be and why it was constructed the way it was.

Mr. Brockenbrough stated when the property was acquired for Love Creek Elementary School, J.G. Townsend Jr. & Co., the seller of the property retained access through the existing driveway with the intention to utilize the driveway for access to the subject property; that the construction of the entranceway is desirable by DelDOT; that he did not recall the specific history of when the school was developed; that the entranceway is consistent with the preferred construction from DelDOT's view, to minimize the number of access points; that in minimizing fewer access points, it allows fewer decision points for a driver and it opens the possibility for signalized access for the development, which would help manage left-hand turns.

Ms. Stevenson questioned if the pool house is proposed to only hold supplies for the pool, or if the pool house was proposed to be larger and utilized by residents and requested the Applicant consider making the pool house a meeting spot for residents.

Mr. Hutt stated a better description of the pool house would be a bathhouse; that it would not be proposed as a clubhouse with exercise equipment and that the pool house is proposed to be a changing area and restroom area.

Mr. Robertson stated the Applications are for a Change of Zone and a Conditional Use and the Commission does have the authority to apply discretion.

Chairman Wheatley stated property owners do have a right to subdivide their land and property owners do not have the right to Change the Zoning for their property; that the Change of Zone is purely discretionary, and the Commission has the authority to make that discretion.

The Commission found Mr. Steve Kittka spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he opposes the project as it is currently proposed; that it was said the

townhomes would generate less traffic; that the proposed townhomes are larger than almost any home located within the Saddle Ridge Community; that the townhomes are 4,600 sq. ft.; that he did not invest in his property with any idea that the adjacent zoning would be changed; that he feels the proposed development will cause an enormous amount of traffic; that he understood there was not a Traffic Impact Study performed for the proposed project specifically; that a lot has changed since previous traffic analysis; that one of the reasons for this is COVID-19 which has led to an increase in traffic to Love Creek Elementary School; that with the traffic currently on Rt. 24, there are frequent accidents and near accidents all the time; that within the last three weeks there have been three accidents within a mile of the proposed development; that two of the accidents were at the intersection of Rt. 24 and Warrington Rd.; that those two accidents caused Rt. 24 to shut down; that the third accident was between Saddle Ridge and Harts Landing; that he has no objection to the Applicant developing the property; that he objects to the proposal of medium density; that he is also concerned with the disturbance to the wildlife and he objects to the Change of Zoning request.

Chairman Wheatley stated that if a Traffic Impact Study (TIS) was performed for a nearby development, DelDOT does not require an additional TIS as the information remains remotely the same.

Mr. Robertson stated DelDOT and Sussex County established the Transportation Improvement District (TID) that the project is part of; that DelDOT has performed the analysis for all the roadway improvements within the entire TID area; that they had to design all road improvements based on the anticipated development within the TID; that then, based on the improvements, a cost is assigned as to what it cost to construct the road improvements; that then a required fee is calculated for each developer to develop the road improvements and the Applicant did not perform a Traffic Impact Study as it is already included in the greater TID.

Mr. Robertson questioned the status of the dualization of Rt. 24.

Mr. Mears requested Mr. Brockenbrough's opinion on townhomes generated vehicle traffic versus residential communities generated traffic.

Mr. Brockenbrough stated the construction began in March 2022 for the dualization of Rt. 24; that it was proposed to be completed in 2023; that he believed completion will be in 2024; that the improvements are proposed to widen to two lanes each way; that sidewalks are proposed on both sides of the road; that DelDOT relies on Transportation Engineers Trip Generation Manual, which provides National-level data on various land uses, including single-family detached houses and townhouses; that generally single-family detached houses generate the most traffic; that townhouses, apartments and various types of multi-family development generate less per dwelling unit and regarding the comment of the size of the townhomes, DelDOT would not have data to support or dispute the fact.

Chairman Wheatley questioned if anyone could provide a comment on the proposed size of the units.

Mr. Ring Lardner stated that they do not know the exact size of the townhouses currently; that the lot widths are 20-ft. wide with a depth of 115-ft.; that the widest lot could be 28-ft.; that after including setback requirements, it would be 20'x75'; that the proposed units are two-story with a first-floor master; that at the largest, an approximate average is 3,000 sq. ft.; that the average size will be 2,000 sq. ft. to 2,500 sq. ft.; that confirmation of size cannot be determined until they find a builder and the proposed size is much less than the size testified by Mr. Kittka.

The Commission found that Ms. Nancy Guerin spoke in opposition to the Application; that she lives in Hart's Landing; that she has concerns about the Love Creek Bridge; that the bridge is not proposed to be expanded; that this will cause a traffic bottleneck, as the traffic will go from four lanes down to two lanes; that currently, she has difficulty exiting her development onto Rt. 24; that she feels after hearing Mr. Hutt explain all the types of development located along Rt. 24, she does not believe another development is needed; that she questioned if any of the mentioned schools and the developments they are adjacent to share a road as is proposed in the current Application; that due to COVID-19, there has been increased traffic to the schools; that this has created a back up of traffic on Rt. 24 down to Mulberry Rd. and she does not feel the Traffic Impact Study for Belle Terre, and the time in which it was performed, took in to account the additional traffic she sees currently.

The Commission found that Mr. Kenny Delmar spoke in opposition to the Application; that he lives in Hart's Landing; that he has a background in real estate, with many decades of experience; that in his experience the last thing a person should want to do is build a development next to a slaughter house, a factory making toxic chemicals or an elementary school; that it would be a kiss of death; that he assured the Commission that the developer, owner and attorneys have not had a discussion with a real estate broker to question what would be coming down the road; that he felt two weeks ago a ceiling was hit; that from here on out it will become more difficult to make a profit with a residential development; that a smart choice to make, would be not to build your development next to an elementary school, while sharing the same entrance with the school; that it would not be a smart choice; that the choice would not be considered good business; that he questioned if any of the attorneys, engineers or developer have children in Love Creek Elementary; that he questioned what will happen with construction traffic caused by the development; that it will be another years lost to a child who is attempting to get an education; that because of the construction, there will be noise from 7:00 am until 4:00 pm for at least a year; that the children who are in school trying to learn, will have to listen to construction noise for at least a year and the future residents will not want to deal with the noise generated by an elementary school on a normal school day.

The Commission found that Mr. Shunli Zhang spoke in opposition to the Application; that he lives in Saddle Ridge Development; that he agrees with all the previously mentioned concerns; that he is concerned about the approximate six acres of forest located on the property; that on one side of the forest is a natural pond; that on the other side of the forest are wetlands; that the current forest is full of life; that the forest life includes bald eagles and he requested the Commission reconsider approving the project, or request a modification to the plan, to help protect the forest, wildlife and natural beauty of the forest.

The Commission found that Mr. Laymen Grant spoke in opposition to the Application; that he is a resident of Belle Terre; that it was his understanding that a signalized light will be placed at the intersection of Rt. 24 and Mulberry Knoll Rd.; that the current traffic attempting to get onto Rt. 24 is ugly; that with the proposed 84 townhouses; that he would estimate one and a half vehicles per unit; that most families have at least two cars; that there will be 120 additional vehicles with the proposed development, which will be required to merge onto Rt. 24; that occasionally the children at Love Creek Elementary School play outside in the adjacent field; that Beacon Middle School has athletic fields; that he feels placing the development without the red light would be a disaster; that there will be an accident; that he has only lived in Sussex County a year; that there are times he cannot figure out how to cross Rt. 24; that people will take a chance, shooting out onto Rt. 24; that he feels there would be a chance they head into the field, where children may be at play; that in the evening hours, there is limited lighting in

the area; that he does not have an issue with the development of the property but he does have an issue with the traffic.

Mr. Brockenbrough stated he believed the plan was to place a signalized red light at the intersection of Mulberry Knoll Rd. and Rt. 24.

The Commission found that Mr. Maureen Burns spoke in opposition to the Application; that she lives within Belle Terre directly behind the proposed project; that she questioned if the Commission approves the Change of Zone request, could the Applicant change their proposed plans; that the elevation of the proposed site is higher than her property; that she is concerned she will receive all of the water run off when it would rain; that she questioned if there are proposed balconies for the townhouses and she is concerned about her privacy and the ability of future residents to look through her windows.

Mr. Robertson stated the Commission would make a recommendation to County Council; that County Council would approve or deny the Change of Zone request; that if the Change of Zone were to be approved, the Applicant could potentially propose a subdivision; that a subdivision would require another public hearing; that the maximum building height would be 42-ft.; that if the Change of Zone were approved, the Applicant would be permitted to do anything permitted within MR (Medium-Density Residential) Zoning District.

Chairman Wheatley stated the stormwater regulations are regulated and enforced by the Sussex Conservation District; that Sussex Conservation District regulations stated the Applicant must contain the property's stormwater on-site; that the Applicant must dispose of the water runoff either on the property site or through a properly regulated design outfall and the Applicant would not be permitted to allow any runoff onto Ms. Burns property.

Mr. Ring Lardner stated they cannot speak to the design of the townhomes; that there is a 20-ft. landscape buffer proposed on the property site; that there is a 50-ft. landscape buffer on the Belle Terre property and that the buffers would allow for a 70-ft landscape buffer between the homes.

Mr. Robertson questioned what the rear setback requirements for the proposed units were.

Mr. Whitehouse stated that each unit must have an agricultural buffer; that the Applicant can split the buffer, however, the plan would be required to be seen before the Commission for site plan review; that it is required to be a minimum of 40-ft. spread front and back; that the buildings can be no closer than 40-ft. from each other; that the minimum landscape buffer required is 20-ft. or the Applicant would be required to obtain a variance; that there is 40-ft. between the buildings and the property lines; that within the 40-ft. setback there is a 20-ft. landscape buffer and any setback and landscaping located on the Belle Terre property.

The Commission found that Ms. Patricia Hutchinson spoke in opposition to the Application; that she lives with Belle Terre; that she has concerns with the wild life, the removal of the existing woods and transportation issues; that she is a retired educator; that she knows what happens on an elementary school property; that she knows the amount of traffic comes and goes from the property; that she knows the amount of children that play outside; that she does have concerns with the construction and the issues it will cause for the children; that she is concerned children will not be able to go outside for recess, which the children just experienced during the COVID-19 pandemic; that she is concerned about the additional

traffic coming and going from the site; that she would appreciate a signalized red light; that she is concerned about other permitted building that would be permitted with an approval to the Change in Zone request; that she is concerned about the possibilities of a transient population or rental population being placed next to an elementary school and a community for the 55+ year community; that she has concern regarding the water runoff; that she was told that Belle Terre previously proposed mixed development, which included townhomes; that the townhouses were denied at that time; that she feels the townhouses would not be similar to surrounding communities; that she does understand if the zoning is changed the Applicant is permitted to construct anything permitted within that zoning and the neighbors would get no say in what the Applicant were to propose.

The Commission found that Mr. Thomas Negran spoke in opposition to the Application; that he is a resident of Belle Terre; that the lovely 21-acre cornfield will be removed; that 84 multi-family units are proposed for the area; that only single-family homes and an elementary school border the property; that a major concern is the increased traffic; that the proposed development will share the entrance with Love Creek Elementary school; that according to the documentation there will be 598 additional vehicles daily; that the area is already congested; that the increased traffic may pose a threat to the safety of the Love Creek Elementary children; that according to the Site Plan, the backyards of 18 units will directly face the school property; that the water runoff from the 14 units roofs will flow into the direction of Belle Terre residents back yards; that he saw no proposed retention ponds in the area bordering Belle Terre; that four acres of woodlands will be destroyed; that 7.9 acres of impervious material will replace the field; that according to the report from DNREC, there are several rare and/or endangered species in the project area; that multi-family units sell for a lower price point than single-family homes; that the lower price point often leads to investors purchasing units for rental; that transient neighbors may not be the most desirable neighbors, especially to school-aged children; that the Land Elevation Map, located on page 72, of the Paperless Packet indicates a natural slope downward to 25-ft. above sea level at the rear of the property; that the elevation drops to 21-ft. above sea level on Decatur Street in Belle Terre; that the runoff could become detrimental to the Belle Terre community with the removal of the trees; that he questioned if the Applicant plans to sell the property to a developer, to develop themselves, to receive subsidies for low-income housing and what the expected selling price is for the proposed townhomes; that he commends Sussex County for purchasing land in efforts to preserve land; that he requested Sussex County purchase the subject property to be preserved and/or utilized as a park or recreational area and he stated the revenue to Sussex County will receive, from the 1.5% transfer tax from Belle Terre alone will amount to at least \$2,000,000.00 and could be put to good use for the residents of Sussex County.

Mr. Robertson stated the Commission does not discriminate at all based on income levels, housing type, type of owner, or type of tenant; that the question is inappropriate and will not be required by the Commission.

Ms. Stevenson stated Mr. Ring Lardner serves on the Sussex County Land Trust; that the Sussex County Land Trust is a non-profit organization that purchased land to preserve; that she recommends people contact him to discuss donating.

The Commission found that Ms. Martha Eisenhour spoke in opposition to the Application; that she lives on Retz Lane; that her property back up to the Love Creek Elementary School property; that she was happy to hear when a school was being proposed behind her property; that she would rather a school than a convenience store; that she is opposed to the Change of Zone request; that currently, the Applicant

knows two units to the acre is permitted within the AR-1 Zoning District; that this would allow for 43 homes; that the Applicant would place 43 homes on the property while preserving the woodlands; that she has lived on her property for 43 years; that within the last year she has noticed an influx of wildlife in her yard and the only thing she can attribute it to, is the fact that we are destroying the woodlands, creating nowhere else for the wildlife to go.

The Commission found that Mr. Victor Mantarro spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he had a concern about the proposed stormwater drainage; that his backyard faces the wetland area; that one year, there was an extraordinary amount of rain, which caused the wetland area to fill quickly; that the overflow of water ran into the existing woods; that the woods help maintain the 15 inches of water from the back of his house and his neighbor's house; that the project will be adding additional runoff; that he is not convinced that the Applicant will be able to control the runoff flowing into the wetlands and he is concerned if the Applicant cannot control the runoff it will cause runoff onto his property.

The Commission found that Ms. Susan Armato spoke in opposition to the Application; that she is a resident of Belle Terre; that she supports development; that she is opposed to the Change of Zone request; that she believes the owner has the right to the permitted use within the AR-1 Zoning District; that proposing 84 units would be a disservice to all nearby residents; that approval will set the precedence for anyone with AR-1 Zoning to request rezoning as well.

The Commission found that Mr. Paul Paolini spoke in opposition of the Application; that he has been a resident within Saddle Ridge Community for a year; that he has been in real estate for 25 years; that he is a landscape architect by degree and practice; that he agrees with Mr. Delmar, who stated a property adjacent to a school is a challenge due to the unknowns of school traffic and noise of the children; that he previously sold a home between a men's prison and a women's prison; that he believes selling that home between two prisons would be easier than selling a home next to a school; that he played recordings of emergency sirens for the Commission; that he stated the sirens are sometimes heard up to five times a day along this corridor of Rt. 24; that the representative of the Applicant did a good job identifying what is along the Rt. 24 corridor; that soon the residents of Saddle Ridge will be required to cross two lanes to make a left turn onto Rt. 24; that the whole corridor has a high level of activity and that is the reasoning for his opposition to the zoning change of the parcel.

The Commission found that Ms. Bettina Peronti spoke in opposition to the Application; that she is a resident of Belle Terre; that she had concerns about sharing the entranceway with the elementary school, being located adjacent to the elementary school, that she feels the Traffic Impact Study was based on the Applicant putting in 37 single-family homes, with two vehicles a home; that with 37 single-family homes the total vehicles would be 74 vehicles; that when placing 84 townhomes, at one vehicle is 84 vehicles; that she would like clarification put on record stating that the multi-family units will not cause more traffic than single-family homes; that she is opposed to the rezoning; that the representative to the Applicant did a good job describing development within the area; that she feels the Applicant can develop the property under the existing AR-1 Zoning; that she questioned if there is a percentage the County is requiring or identified as a target as a percentage of permits to single-family homes as opposed to multi-family units; that she questioned if we are meeting the target or percentage as a community; that the Commission needs to take into consideration the location, impact and use of the land and not only considering the number of permits provided to single-family or multi-family homes approved over the last three years.

The Commission found that Ms. Judy Seibert spoke in opposition to the Application; that she is a resident of the Saddle Ridge Community; that she is opposed to both the Change of Zone and Conditional Use Applications; that as a local resident, she believed there will be an adverse effect on adjacent neighborhoods; that left turns onto Rt. 24 is a challenge; that adding 84 townhomes will exacerbate the issue; that she believes the project will have an adverse effect on Love Creek Elementary School; that she understood DelDOT accepted the Belle Terre Traffic Impact Study from 2016; that Love Creek Elementary School was not built until 2017; that she does understand the property is located within the Henlopen TID; that her opinion is a current Traffic Impact Study at the discretion of the Commission; that a TIS should be required because of the additional traffic cause by the COVID-19 pandemic and the change in school districts for children; that the dualization of Rt. 24 will narrow down to one lane, west bound, in front of the Saddle Ridge Community; that this will cause increased congestion at their intersection; that one lane will turn into a right lane only turning into the Saddle Ridge Development; that there is a possibility of the townhomes being used as rentals; that the townhomes would be ideal for the use of rentals; that the units are large in size, being from 3,080 sq. ft. to 4,600 sq. ft; that if the townhomes were used for rentals it could increase the vehicle traffic dramatically; that she appreciated Mr. Robertson's comments that the public comments can be taken into account when considering Change of Zone requests and she requested the Commission use their discretion, not recommending approval for the Change of Zone request.

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

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

At the conclusion of the public hearings, the Commission discussed the Ordinance and Applications.

In relation to the Ordinance for Tax Parcel No. 334-12.00-16.04. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0.

In relation to the Application C/Z 1949 J.G. Townsend Jr. & Co. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0.

In relation to the Application C/U 2304 J.G. Townsend Jr. & Co. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0

ADDITIONAL BUSINESS

Mr. Whitehouse advised the Commission that the new document management system is nearing an advanced stage; that it will soon be revealed to the Commission and County Council and the joint bus tour for Commission and County Council is still pending due to the various initiatives currently taking place and a future date in the fall would be preferable.

Ms. Stevenson requested Mr. Hanz Medlarz, Sussex County Engineer, attend a future meeting to discuss the stormwater requirements and processes.

Meeting adjourned at 8:47 p.m.

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