

MINUTES REVISED AND APPROVED ON 10/28/2021

THE MINUTES OF THE REGULAR MEETING OF JUNE 24, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, June 24, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 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, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, and Ms. Lauren DeVore – Planner III.

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

Motion by Ms. Wingate, seconded by Mr. Mears to approve the Minutes of the May 27, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 5-0

ADDITIONAL BUSINESS

Ms. Jennifer Cinelli-Miller, from DelDOT Planning, gave a presentation of the Fiscal Years 2023-28 Capital Transportation Program for Sussex County.

OTHER BUSINESS

Plover Point (2018-9) (F.K.A. Oak Landing)

Final Subdivision Plan

This is a Final Subdivision Plan for the creation of a cluster subdivision to consist of one-hundred and forty-seven (147) single-family lots with access off of Oak Orchard Road (Route 5) in Long Neck, Delaware. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, September 13, 2018 subject to sixteen (16) conditions. A Revised Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, December 10, 2020. The changes to the plan included the removal of Scarlett Oak Drive, adding cul-de-sacs on both ends of Chestnut Oak Drive, the addition of stormwater management ponds along the project's frontage, and a decrease of 92 lots. The Final Subdivision Plan complies with the Sussex County Subdivision Code and all Conditions of Approval. Tax Parcel: 234-34.00-97.00. Zoning: General Residential (GR). Staff are in receipt of all agency approvals.

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

Black Hog Village (S-18-64)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of six (6) retail buildings totaling 21,818 square feet, associated parking, and additional site improvements to be located on the south side of New Road (S.C.R. 266). The Preliminary Site Plan for the site was approved by the Planning and Zoning Commission at their meeting of Thursday, October 11, 2018, with final approvals to be made by staff

upon the receipt of all required agency approvals. Changes to the plans include reducing the previous total square footage by 550 square feet), a reduction of the total number of parking spaces by seven (7) spaces). Additional improvements to the site include a proposed pedestrian entrance, bicycle parking for the trail, an outdoor stage, two raised decks, and a porch. Other structural changes to the plans include Building #1 (10 additional square feet), Building #2 (600 additional square feet), Building #3 (reduction of 744 square feet), Building #4 (reduction of 516 square feet), and Building #5 (120 additional square feet). Building #6 remained unchanged from the original proposal. The Applicant has coordinated with DelDOT regarding the provision of landscaping and a shared-use path for the Lewes Byway. The Applicant is requesting to defer the inclusion of plantings for the proposed Lewes Byway along the project's frontage until DelDOT has constructed the Nassau/New Road construction project (Contract # T201612501) and will engage in further discussion with the Lewes Byways Committee. The Applicant has also indicated that the developer of Black Hog Village fully intends to provide interconnection with the Lewes-Georgetown trail that is located along the rear of the property. The Applicant's response has been included in the Commission's packet. The Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-76.00. Zoning: General Commercial (C-1). Staff are in receipt of all agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer the Revised Preliminary Site Plan for further information regarding the proposed stage. Motion carried 5-0.

Bayhealth Campus Rt. 9 (S-21-10)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 48,500 square foot medical office building, 287 parking spaces, and other site improvements to be located on the northwest corner of Lewes Georgetown Highway (Rt. 9) and Hudson Road (S.C.R. 258). The site has an approved Change of Zone (C/Z 1866) that was approved by the Sussex County Council on February 5, 2019, through Ordinance No. 2632. The Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-27.00-11.01. Zoning: Institutional (I-1). Staff are awaiting agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer the Revised Preliminary Site Plan for further information regarding proposed lighting and buffers. Motion carried 5-0.

Lands of H&S Properties, LLC (S-20-11)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a two-story office addition to an existing one-story building. The plan proposes to relocate a shed, a loading area, and 9 parking spaces. Staff note that parking exists and is proposed to remain within the front yard setback. The property is located on the northwestern corner of Church Street (S.C.R. 285B) and Beaver Dam Road (S.C.R. 23). This plan is a revision to the Preliminary Site Plan that was first reviewed and approved by the Planning and Zoning Commission at the meeting of September 8, 2020. Furthermore, this development is now participating in the Henlopen Transportation District (TID), and this agreement is currently being drafted. This plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-5.00-212.00. Zoning: AR-1 (Agricultural Residential) Zoning District. Staff are awaiting DelDOT approval which is the last agency approval required.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to deny the Revised Preliminary Site Plan. Motion carried 5-0.

Sea Colony West (C/Z 1153)

Revised Amenities Plan

This is a Revised Amenities Plan for Sea Colony West (C/Z 1153) for a proposed 2,028 square foot clubhouse, a splash pad, jacuzzi tubs, and other site improvements to be located on the south side of Pine Wood Dr within the Sea Colony West community. Change of Zone No. 1153 was approved by the Sussex County Council at their meeting of Tuesday, May 19, 1992, and adopted through Ordinance No. 829. The Revised Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 134-17.00-41.00. Zoning: High-Density Residential – Residential Planned Community (HR-RPC)

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

Chase Oaks (2019-5)

Revised Amenities Plan

This is a Revised Amenities Plan for the Chase Oaks Subdivision, for a proposed 3,380 square foot clubhouse, an 8,330 square foot pool area, a 6,720 square foot pickle ball court, a 400 square foot mailbox pavilion, and other site improvements to be located on the south east side of Chase Oaks Dr within the Chase Oaks subdivision. The Final Subdivision plan for the Chase Oaks Subdivision was approved by the Planning and Zoning Commission at its meeting of December 17, 2020. The Revised Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 234-6.00-96.00. Zoning: Agricultural Residential (AR-1). Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Revised Amenities Plan. Motion carried 5-0.

Lands of Wanderson Noguera

Minor Subdivision off a 50-ft easement

This is a Minor Subdivision for the subdivision of a 7.66-acre +/- parcel of land into two (2) buildable lots consisting of 6.38 acres +/- and 1.27 acres +/-, with access off of a proposed 50-ft ingress/egress access easement. The parcels are located on the north side of Stockley Road (S.C.R. 280). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-5.00-44.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50' easement. Motion carried 5-0.

Lands of Ponderosa Acres

Minor Subdivision off a 15-ft easement

This is a Minor Subdivision and Lot Line Adjustment Plan for the subdivision of a parcel that is approximately 65.10 acres. This plan proposes one lot that is 1.0 acre +/- . Additionally, this subdivision involves the adjustment of two adjacent parcels. Approximately 0.053 acres +/- is proposed to be removed from Tax Parcel 130-6.00-113.01, and 0.9947 acres +/- will come from Tax Parcel 130-6.00-113.04 which is the residual land. The property will have access off Johnson Road (S.C.R. 207) through an access easement that is 15-foot wide which is proposed over an existing driveway. The site is located on the northeastern corner of Johnson Road and Dupont Boulevard (Rt. 113). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-6.00-113.04.

Zoning: AR-1 (Agricultural Residential). Staff are in receipt of all agency approvals; therefore, this plan may be considered for both Preliminary and Final Subdivision Plan approval.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 15' easement. Motion carried 5-0.

OLD BUSINESS

2020-14 Barron's Place

A standard subdivision to divide 21.88 acres +/- into 21 single-family lots to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County. The property is lying on the east side of Christ Church Road (S.C.R. 465A), approximately 450 feet north of Laurel Road (Rt. 24). Tax Parcel: 232-18.00-4.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since June 10, 2021.

Ms. Wingate moved that the Commission approve Subdivision **2021-14** for **BARRON'S PLACE** based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a standard subdivision within the AR-1 Zoning District. This is the same location of a subdivision that was approved in 2009. That approval lapsed in 2017 after extensions were granted.
2. The subdivision will have no more than 21 lots on 21.88 acres. This density is well below the maximum density that is permitted in the AR-1 zone.
3. All lots will be at least three-quarters of an acre in size.
4. Based upon the record and with the conditions of approval, this subdivision will not have an adverse impact on the neighboring properties or area roadways.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code and the applicant has addressed the requirements of Section 99-9C of the Code.
6. The applicant has requested approval of a design that does not include buffers around the entire perimeter of the subdivision because the site plan is the same as what was approved in 2009. A waiver from the buffer requirement is appropriate along the existing strip lots that front Shiloh Church Road and Route 24 since those lots are essentially part of this subdivision, having originated out of the same larger parcel. However, the remainder of the subdivision must comply with the current buffer requirements, including the provision of a buffer at the rear of Lots three (3) through nine (9).
7. The lots will have individual wells and septic systems.
8. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
9. This preliminary approval is subject to the following:
 - a. There shall be no more than 21 lots within the subdivision.
 - b. The developer shall establish a homeowners association responsible for the maintenance of streets, buffers, stormwater management facilities, and other common areas.
 - c. 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.
 - d. There shall be a 20-foot buffer installed along the perimeter of this subdivision, with the exception of Lots 14-21. This buffer shall utilize existing forest or similar vegetation as much as possible with limited disturbance. 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.

- e. The development shall comply with all DeIDOT entrance and roadway improvement requirements.
- f. Street design shall meet or exceed Sussex County standards.
- g. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- h. 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. A 24 inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at all entrances to the site during construction.
- i. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- j. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve 2020-14 Barron's Place for the reasons and conditions stated in the motion. Motion carried 4 – 0. Mr. Hopkins – Abstained.

PUBLIC HEARINGS

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

2020-08 Lockhaven

A standard subdivision to divide 125.8 acres +/- into 25 single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the west side of Round Pole Bridge Rd. (S.C.R. 257), approximately 0.48 mile west of Hudson Rd. (S.C.R. 258). Tax Parcel: 235-15.00-34.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit book including the Chapter 99-9C response, a copy of the Soil Feasibility Report, a copy of the Applicant's Preliminary Subdivision Plan, TAC comments including US Department of Agriculture and DeIDOT's letter of the impact of the development, Sussex County Engineering Department Utility Planning Division letter, no letters of support, six letters of opposition, one mail return, and that comments received after dissemination of packet links have been circulated to the Commission.

The Commission found that Mr. Carlton Savage, Jr. with Scaled Engineering was present on behalf of the Application, that also present is Mr. Don Lockwood and Ms. Elizabeth Lockwood; that it is a major standard subdivision; that the name Lockhaven has been approved by 911 Addressing; that it is for 25 lots; that it is 125.88 acres based off of a prior survey that has been recorded under plot book 72, page 36 by Miller & Lewis, Inc.; that the density will be 2 units per acre; that 14.75 acres, which amounts to 12% of open space is proposed; that a single access road off of Round Pole Bridge Road is proposed; that it is located in a Level 4 area on the 2020 State Strategies Map, which does not require the developer to install shared use paths, unless it connects to another property with shared use path; that the property is in the low density area as depicted on the 2019 Future Land Use Map; that with 25 lots it is proposed

to stay at a low density strategy; that the property has a 2.5-acre average; that lot 15 is about 30-acres, which was not included in the 2.5-acre average; that there is about 28.7-acres of wetlands on

the property; that there will be the required 50-foot buffer; that the property is surrounded by woodlands on three sides of the property; that there is no intent to remove much of the wooded area, just enough to build the homes; that the intent is for 2-story homes with good amounts of square footage; that possibly homes could have a pole building in the back; that the developer of the property is Limitless Development Consulting; that the owner is Lockhaven, LLC; that the property is zoned AR-1; that the surrounding properties are AR-1 zoning; that a mistake was made, and there are 65.9-acres of wetlands; that wetlands surround the property on all three sides; that the Broadkill River and Beaver Dam Creek are to the east of the property, and another tributary to the north of the property; that there is a man-made lagoon to the northeast of the property; that there is an exception under item C that farm ponds and other man-made features are excluded from needing buffers; that a 50-foot buffer is not being proposed off of the man-made lagoon; that there may be an intention to request a boat ramp or dock from the Army Corps of Engineers and that the boat ramps/docks would only be for the use of the community.

Chairman Wheatley asked Mr. Whitehouse if the Planning & Zoning staff agreed with Mr. Savage's interpretation of the code regarding not having a buffer around the lagoon.

Mr. Whitehouse stated that the intent of the Code is that a buffer is required for natural wetlands and that artificial man-made wetlands do not require buffers.

Mr. Robertson states the code's exact wording which states exclusions around the buffer zone designation are farm ponds, tax ditches, and other man-made bodies of water.

Mr. Savage continued stating that there is a storm water management pond in the middle of the property; that based off of the soil feasibility study the better soil for septic was found on the outside of the property; that around the frontage and middle of the lot did not have suitable soils for septic; that lot 24 is located in the middle back; that lot 25 is located in the middle front; that lot 25 is not a prime lot for septic but that the developer did not want to exclude his ability to build on that lot if something changes with a more detailed feasibility of the lot with the site evaluation; that the Applicant is reserving Lot 25 to be developed last; that the Applicant has exceeded the open space requirement; that the Applicant has tried to maximize the number of lots that still financially work for the property; that with larger lots there is a greater need for more roadway per lot; that it is a balance between maximizing property size while still making the roads and storm water work; that there will be on-site septic systems and on-site wells as the property is not within jurisdiction for public sewer and water; that the developer has been contacted multiple times in regards to extending sewer but with proposing larger lots extending sewer would not make sense; that the property will have to go through approvals from Sussex Conservation District and DelDOT; that it has been determined with DelDOT that the proposed Application will have a negligible impact due to the low density; that Round Pole Bridge is 20-foot wide and is typical for subdivision roads; that there has been written concerns regarding the measurement of the road; that DelDOT has jurisdiction of the road; that the road does not warrant anymore width than what is shown; that the road is a tar-chipped 20-foot-wide road; that the property is located in the Cape Henlopen School District; that the property is protected by The Milton Fire Department; that responses were provided to the 99-C questions; that the Applicant intends to minimize the use of wetlands; that there is residential housing across the street; that there are large-lot subdivisions across the street; that a berm will be placed along the frontage to minimize the view of the road; the design of the berm is not yet known; that there is a 50-foot buffer to preserve the natural and historical features; that there is a great view with the open space and man-made lagoon; that the Applicant wants to preserve the man-made lagoon; that there is

38.84-acres of woodlands; that the Applicant intends to preserve 60% or more of the woodlands; the road on the left side of the property is placed near the edge of the woodlands; that the intent is only the

housing will be into the woodlands; the property is located in a fair ground recharge area; that it is 290 ADT; that a Traffic Impact Study was not required; that the Memorandum of Understanding does not require any more than what the entrance plan and improvements require; that there was some concern regarding vehicle weight on a wooden bridge on the east of Round Pole Bridge Road; that there is no weight restriction on Round Pole Bridge Road; that DelDOT monitors the weight capacity on their bridges; that there was concern regarding the construction vehicles and traffic; that currently farm tractors and different objects use the road with no issues; the site evaluation was completed in 2006 and reviewed by DNREC in 2015; that individual site evaluations and extensive testing per lot for septic would be performed if the Application is approved.

Chairman Wheatley asked Mr. Lockwood if he agreed to everything put into testimony on his behalf.

The Commission found that Mr. Dan Lockwood spoke on behalf of his Application and that he confirmed all the information provided by Mr. Savage was accurate and honest.

Ms. Stevenson asked if there were wetlands present within the boundaries of some of the lots proposed.

Mr. Savage stated yes there are wetlands present within the boundaries of some of the proposed lots.

Ms. Stevenson stated that is not permitted.

Mr. Robertson clarified that wetlands within proposed lots are not permissible within-cluster subdivisions, that it is typically not approved within standard subdivision but that is not stated in the code.

Ms. Stevenson questioned if pedestrians would have to walk across a resident's lot to get to the proposed boat dock.

Mr. Savage stated the Applicant has proposed a 15-foot wide easement to allow access to proposed amenities; that the depth of the water would need to be measured to see if it is feasible or if it is something Army Corps of Engineers would allow; that typically 10% of the distance is allowed; that the lagoon would be for kayaking or two private boats; that a private dock is proposed on lot 15; that the two docks on the bottom would be for the remainder of the residents.

Ms. Stevenson suggests that the easement be made open space and turned over to a Homeowner Association.

Ms. Stevenson questioned DNREC's comments to lot 3 not perking and concerns about lots 2,4, 12, and 13 needing mound septic systems.

Mr. Savage stated that was true; that DNREC stated lot 3 would work but the Applicant would have to move a few lots around; that the proposed site plan shows the adjustment to the lots as suggested; that the DNREC report was performed on a prior site plan layout.

Ms. Wingate stated that DNREC will perform another evaluation and that DNREC recommends that lot 3 soils be included in lot 2 or lot 4.

Mr. Savage stated this is correct; that the lot numbering has changed; that the information in DNREC's packet is not reflective of the current lot numbers proposed and the Planning and Zoning Commission does not

have the previous plan that went along with DNREC's report.

Ms. Stevenson asked if there will be a Homeowners Association.

Mr. Savage affirmed that there will be a Homeowners Association.

Ms. Stevenson asked if there are sidewalks.

Mr. Savage stated in a standard subdivision, sidewalks are not required.

Ms. Stevenson asked if there will be a restriction on what residents can place on their yards.

Mr. Savage stated that there is a draft started as part of the initial comments from staff; that there will be a restriction to the height, size, and number of outbuildings.

Ms. Stevenson stated she is mostly concerned about chemicals in lawn treatment.

Mr. Savage stated it will have to be investigated; that he does not predict that 2 to 3 acres of a lawn will typically be fertilized and irrigated.

Ms. Stevenson asked if there will be a delineation on lots stating where wetlands are and that they may not be used for building placement.

Mr. Savage stated they determined wetlands based on the mapping website; that the wetland delineation is extensive which will be located by survey marker and placed on the plan for final; that a few lot lines may need to be shifted to maximize the wetlands; that a full wetland delineation will be done and located through the trees to place on the plan.

Mr. Robertson questioned if there will be permanent signage stating that the wetland area is non-disturbed.

Chairman Wheatley noted that the Planning & Zoning Commission can place conditions that would regulate issues with fertilizer and wetland disturbance.

Mr. Hopkins questioned the weight limit on the bridge.

Mr. Savage stated he did not see a weight limited posted; that he checked on Google Earth and found no weight limit; that he does not know the structure of the bridge; that he believes it is mostly wooden; that it is a very small bridge and tractors and tractor-trailers are currently going over this bridge.

Mr. Hopkins stated it is a long way around without using the bridge and asks what the age of the bridge is.

Mr. Savage stated he does not know the age of the bridge.

Mr. Hopkins expressed concern about the worn road and the effects of construction traffic.

Mr. Savage stated he knows of no issues to date in regard to issues created by construction equipment; that the same equipment would be used regardless if it is one home or multiple homes; that in improving the road DelDOT does road counts to justify roadway improvements; that the road is currently a Level 4 and increased traffic could potentially get the road to the next level.

Ms. Wingate questioned page 63 regarding the clearing of trees and what is permissible; that typically there are covenants that will define what is allowed in the area.

Mr. Savage stated typically residents are restricted by the wetland and agricultural buffers; that a tree clearing line is proposed which will provide room for each lot; that extensive research has not been done on the septic and based on septic review the need to go further into the woods may be required to achieve the best septic area.

Mr. Robertson stated staff with his help developed a standard of conditions; that on the buffers there are limitations to what could happen in the buffers; that there must be silt fences on the outside of the buffers and limit to disturbance line; that the language was created by staff with the help of The Conservation District; that they also received a condition for tree preservation areas that will legally stop the cutting down of trees.

Mr. Savage stated the first lot on the left is a typical example with a 2,500-square foot footprint home with a driveway and pole building in the back; that each lot will have separate designs.

Mr. Whitehouse expressed concern about an accessory structure in the front yard of a lot.

Mr. Savage confirmed it is a house in the front with a pole building in the back.

The Commission found that Ms. Janet Le Digabel spoke in opposition to the Application; that her house is adjacent to a pole building in which she will be facing; that in her opinion facing a pole building will bring the value of her property down; that 99% of homes on Round Pole Bridge Road face toward the road; that she is concerned about the berms, shed and dog kennels she may have to look at in the back of someone's home; that Round Pole Bridge is a wooden bridge and she would like an engineer with the Department of Transportation study the weight of the bridge; that the road by her measurement is 18-foot, tar and chip single-lane road; that two cars can barely pass without hitting a mailbox; that Hudson Road is 22 feet by her measurements, that the road cannot handle 29 round trip cars daily; that she would like the project deferred until the bridge and the road have been studied by DelDOT; that the parcel is wet and it floods; that taking down the trees will offset the buffer, flooding more out into the land; that she questions if the lagoon needs a 50-foot buffer as she believes it to be affected by tidal waters; that the lagoon was made in the 1960's and is now part of nature; that she would like to see a condition placed for no motorboats; that she is concerned that residents guests will also use the boat dock; that DNREC will need to do a study on the lagoon, as there are pilings present to keep boats out; that she is concerned about the 45 degree curve at the entrance of the development; that Round Pole Ridge Road has a total of five 45 degree curves making the increased traffic on a single lane road dangerous; that there were 37 motor vehicle accidents on Hudson Road in 2019 per DelDOT's website; that she is concerned about the proposed pastureland in the center of the property; that a new soil study should be done as the last was performed in 2006 and concern that in 2018 Mr. Lockwood cut down mature growth trees at Warrington Road and Route 24 after stating he would not do so.

The Commission found that Mr. Ronald Doughty spoke in opposition to the Application; that he has a

concern about the removal of trees next to his property, concerns about the bridge and road, and states the nature of the road will change a lot.

Ms. Stevenson asked if Mr. Doughty ever gets flooding on his property.

Mr. Doughty states he does but the flooding is on the other side of his property near his barn; that there is a 4-foot berm near his driveway.

The Commission found that Mr. John P. Reed spoke in opposition of the Application; that he has lived on Round Pole Bridge Road 71 years; that he owns a parcel of marsh directly across from the Application parcel; that he hunts on his parcel of land for income; that if approved he would not be able to shoot toward the houses; that his hunting range will drop to 900 yards and it will negatively impact his hunting and put him out of business; that he would no longer be able to hunt on his property; that he has a concern about the bridge not being high enough and that water is creeping up on it now and that the road is dangerous due to limited visibility due to cornfields.

The Commission found that Mr. Alan Davis spoke in opposition of the Application; that he has been a resident of Round Pole Bridge Road for over five years; that the bridge itself may be structurally sound but it is unknown; that two years ago DelDOT took the approaches to the bridge out and rebuilt them and they are already sinking back into the marsh; that additional traffic will have an impact on the bridge; that he is the head of the hunting group that leases land west of the proposed property; that it is owned by Francis Reed Dunlap Trust; that the creek running between the two properties is hunted regularly during duck and deer season; that he requests a condition be set in place at least 300 feet from the centerline of the creek because that is the minimum distance DNREC allows hunters to shoot from an occupied dwelling; that a condition be placed informing all residents that active hunting does take place across the creek.

The Commission found that Mr. Mark Nardi spoke in opposition of the Application; that he has concerns about hunting in the area and questions if residents will be able to hunt on their properties; that an increase of duck blinds will cause serious issues; that hunting will be loud and early in the morning; that this plan is an improvement from the 156 houses proposed in 2006; that he feels there are a lot of unanswered questions; that he feels after removing the wetlands, the density increases with the number of lots; that he hopes there is no plan for street lights as the light pollution has impacted his nightly view; and that many of the lots fall within flood plains.

The Commission found that Mr. Bryan Reed spoke in opposition of the Application; that he would like to know the weight capacity of the bridge; that often farm equipment cannot cross over the bridge due to being too wide; that the road is not wide enough for a car to get by the farm equipment; that there is limited visibility due to height of corn and incline of the land; that the 45 degree curves are dangerous on the road; that there is already increased traffic using Round Pole Bridge Road from Creek Fall Farms and River Rock Run; that he questions where the waste of the horses will go so close to the wetlands.

The Commission found that Mr. Nathan Kingree spoke in opposition of the Application; that the man-made lagoon feels much more like it is part of the larger tidal waterway; that he feels the lagoon should receive a wetland buffer and that there are previous breaches of contact in other projects developed by Mr. Lockwood.

The Commission found that Ms. Heather Kingree spoke in opposition of the Application; that there is a concern of how the Application could negatively affect the residents of Round Pole Ridge Road if the

development falls through like previous developments of Mr. Lockwood's; that she has a concern about the congestion of the area; that Round Pole Ridge Road is heavily used by bikers; that with the turns and low visibility she does not think the traffic should be deemed negligible; that by not placing the buffer around the lagoon would be a mistake; that the ordinance refers to the lagoon as a wetland and waterway;

that the Broadkill River is on the 303D List of impaired waters as well as being listed as a fish consumption advisory area by the State of Delaware; that there has already been tree clearing on that land previously; that soil tests are only good for 5-years; that the soil test was performed in 2006 and that before approval a current soil test should be performed.

The Commission found that Mr. Robert Bounds spoke in opposition of the Application; that the bridge is a concern; that the narrowness of the road is a concern; that this is a concern for flood plains; that there is a concern how the wells on the property will meet drinking water standards; and that the density is increased once wetlands are removed and that wetlands need the buffer.

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

Ms. Stevenson had questions about pilings in the lagoon and if it was closed off so water traffic could not get into it.

Mr. Lockwood stated the original owner, Dr. Hoke, put the pilings across to keep water traffic off his property.

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

In relation to Application 2020-08 Lockhaven. Motion by Ms. Stevenson to defer action, holding the record open for Soil Feasibility Study from DNREC and DeIDOT on the current state of the bridge and road, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

2020-13 Terrapin Island (FKA Salt Cedars)

A cluster subdivision to divide 32.13 acres +/- into 42 single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the east side of Camp Arrowhead Road (S.C.R. 279), approximately 1.12 miles southeast of Angola Rd. (S.C.R. 277). Tax Parcel: 234-18.00-31.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicants Preliminary Subdivision Plan, a copy of the Applicant's exhibit book, a copy of TAC comments including comments from the Department of Agriculture, DNREC, and Division of Public Health, a letter from the Department of US Fish and Wildlife, a copy of PLUS comments from the State and a copy of the Applicant's response to the PLUS comments, a letter from the Cape Henlopen School District, a letter from the US Army Corps of Engineers, a copy of the staff review letter, a letter from the Sussex County Engineering Department Utility Planning Division; that this site is within the Henlopen Transportation Improvement District (TID), 177 letters of opposition with some duplicates, one letter of support, multiple petitions with a combined number of 455 signatures and 8 mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Application, that also present is Mr. John Stamato, Mr. Mark Davidson, Mr. Alan Decktor and Mr. Eric Wahl of Pennoni Associates, Mr. Ed Launay of Environmental Resources Inc, and Mr. William Gangloff of Accent Environmental; that the exhibit book was submitted including the PLUS Response, the Section 99-9C

Subdivision report and the Environmental and Assessment Public Facilities Evaluation; that the application is for a 42 single-family residential cluster subdivision: that the parcel contains 32.13 acres of upland and wetlands; that it is located on the east side of Camp Arrowhead Road; that the zoning is

AR-1; that it is located in the Coastal area under the 2019 Sussex County Comprehensive Plan; that the Application is for a Coastal area subdivision that is permitted in Section 115-194.3 of the Zoning Ordinance which states that any lands with any residential zoning, located in the Coastal area, that are served by central water and sewer systems are permitted to cluster single-family attached lots to a minimum size of 7,500-square feet; that there are no other additions or requirements; that Section 115-194.3 was amended this year to require cluster developments located in a Coastal area that are zoned AR-1 must comply with requirements of the superior design criteria in Section 115-25F; that the Ordinance was adopted by Council on February 2, 2021 and it exempted developments that had filed for approval before that date; that the Application was filed in August 2020 making the Application exempt from the amendment; that clustering lot sizes to a minimum of 7,500-square feet is permitted, that the contract for this land was done in February 2020; that the area surrounding the site has extensive residential development; that the property is adjacent to West Bay Park on the south; that West Bay Park was under construction before Sussex County issued zoning; that it was granted a Conditional Use with expansion; that to the west are several individual residences and The Woods on Herring Creek Subdivision; that to the north is the Bayfront at Rehoboth Community; that most of the opposition is from Bayfront owners and Bayfront Homeowners Association; that main concern are the issues the proposed subdivision will have on the Bayfront subdivision; that there has been correspondence between Mr. Stamato and the Bayfront HOA; that there has been efforts made to address the concerns of Bayfront's HOA and individual owners; that the easterly portion of the parcel is located on a peninsula surrounded by wetlands; a portion of the proposed subdivision will be located on the southern portion of the peninsula; that the Bayfront subdivision contains 180 single-family lots; that the main section of Bayfront is north of the proposed site; that there are two sections of Bayfront adjacent to the property site; that lots 178, 179 and 180 located on Cove Court that has no connection to Bayfront; that there are 22 lots, lots 156-177, which occupy the northern portion of the peninsula; that the proposed development would occupy the southern portion of the peninsula; that the 22-lot section of Bayfront was originally denied approval by the Planning and Zoning Commission due to no ability for vehicles to access the lots other than by a bridge; that reconsideration of the denial was requested and The Commission did approve a proposed crossing of the wetlands by a 236-foot bridge with two 12-foot travel lanes, guardrails and a 5-foot sidewalk outside of the travel lanes provided the bridge met DelDOT requirements and approval by State Fire Marshal, Lewes and Rehoboth Fire Company; that bridge has been built and is the main entrance to the 22-lots on the peninsula; that Bayfront has a recreational area located at the beach to the East of the Applicant's property and between the Applicant's property and Rehoboth Bay; that the beach area only has a pedestrian access internally from the Bayfront development with no internal vehicle accesses to the beach; that the Bayfront HOA believes they have exclusive access easement to use a 9-foot-wide road across a portion of the Applicant's parcel; that there is a deed with documentation suggesting there is an easement; that the Applicant's title attorney could not find any recorded documents where the prior owners of the Applicant's property granted the easement; that the survey and original deed were from Sussex Poultry Company to George Coverdale in January 1978; that the Applicant's title work indicates that Sussex Poultry Company never owned the Applicant's property therefore could not have granted an easement for the property; that the easement has caused some disagreement and litigation; that the Applicant has no desire to enter into a legal battle with the Bayfront HOA; that the Applicant recognizes the Bayfront HOA has a practical and necessary need for a vehicular access to the beach area; that the Applicant is proposing a condition of approval to provide a vehicular connection from the eastern cul-de-sac to the property line of the Bayfront beach area; that the Bayfront HOA will be permitted to use the vehicular connection and the roads of the proposed subdivision for vehicular access from Camp Arrowhead Road to the Bayfront beach area for beach area maintenance,

sand replenishment and emergency vehicle access; that the Applicant will install to the property line sidewalk of three lots providing access to the lots on Cove Court, and the owners and occupants of those homes would be permitted to use the sidewalks to the proposed subdivision for pedestrian access to the

beach area; that under 2019 Sussex County Comprehensive Plan the parcel is located in the Coastal area and is in a growth area designated by the Sussex County Comprehensive Plan; that the Comprehensive Plan states a range of housing types should be located in the Coastal area including single-family homes; that the Comprehensive Plan states that the County base density of 2 units per acre is appropriate throughout the Coastal area and that medium and higher density could be appropriate in certain locations; that the plan strongly encourages central sewer and water; that the cluster development allows for smaller lots and flexibility in dimensional standards is encouraged if permanent preservation of natural area is provided; that under the Sussex County Zoning Ordinance the land is zoned AR-1 and no zoning changes are being requested; that the AR-1 zoning district treats detached single-family dwellings on individual lot as a permitted use; that according to Section 115-194.3 of the Zoning Code clustering is permitted in the Coastal area to a minimum lot size of 7,500 square feet when central water and sewer are provided; that in the AR-1 zoning district the allowable density is 2.17 lots per acre; the proposed 42 single-family lots subdivision results in a net density of 1.49 lots per acre; that Tidewater Utilities will provide central water; that Tidewater Utilities has a 12-inch water main that runs along Camp Arrowhead Road and already provides water service to the area; that the development will have central sewer as part of the Sussex County Unified Sanitary Sewer District; that there is an existing force main down Camp Arrowhead Road; that the developments surrounding the site are already served by County sewer; that the proposed subdivision is in accordance with the County's Comprehensive Plan and permitted by the Zoning Ordinance; that the Office of State Planning Coordination states it opposes the Application due to the location being in a State Investment Level 4 area under the State Strategies for State Policies and Spending document; that the Strategies documents and investment level designations are not statutory mandates on which a land use application is decided; that page 6 of the 2020 Strategies document states "It is equally important to note again that while this document and map series direct state investments it is not a land use plan"; that in Delaware the state has delegated land use authority to the local governments; that any land development activity must comply with the Comprehensive Plans and meet all relevant codes and ordinances of local jurisdictions; that this is also stated on page 410 in the Sussex County Comprehensive Land Use Plan; that the strategies document also states that maps in the document, such as the investment level maps are not parcel based; that it is necessary to thoroughly investigate the constraints of a particular land parcel; that the investment map indicates the entire 32.13-acre parcel is designated and investment Level 4; that 3.87 acres of the parcel is wetlands; that 8.06 acres are non-tidal wetlands; that the tidal and non-tidal wetlands are appropriately designated as an investment Level 4; that 20.2 acres of uplands that are inappropriately included in the investment Level 4 designation; that the uplands are no different than other lands in the area; that the strategies document is not a land use plan and the only purpose is to determine where the state will direct investment and fund infrastructure; that the basis of the Planning and Zoning opposition is in the first paragraph on page 2 of the PLUS letter and states "From a fiscal responsibility prospective development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed will bring new residential development to an area where the state has no plans to invest in infrastructure upgrade or additional services."; that the Planning & Zoning statements applied to the Applicant's application have no relationship to reality; that the surrounding area around the parcel is currently a high developed, lower density residential area that is served by public water utility company and Sussex County Sewer; that the Applicant's land is a infill parcel in a developed area; that the Applicant's parcel is not a rural area; that DelDOT has several improvement projects planned or already under construction on the Route 24 corridor including the Camp Arrowhead Road and Route 24 intersection; that on page 3 in the PLUS letter there is a statement from Bill Brockenbrough stating that there is a project plan for the TID to

improve the state maintained part of Camp Arrowhead Road to provide 11-foot lanes and 5-foot shoulders; that state infrastructure is planned; that the Planning & Zoning comments of opposition are misplaced and relies on incorrect information; that at the end of DNREC comments in the May 21, 2021

PLUS letter there are bullet points in a closing statement listed as requirements; that other discussions in the PLUS letter fall under recommendations and additional information; that the Application will comply with all the listed requirements; that DelDOT stated a Traffic Impact Study was not required; that the site is in the Henlopen Transportation Improvement District (TID); that due to the Application being filed prior to the creation of the TID it is not required to participate in the TID; that DelDOT will require the normal right-of-way dedication; that the entrance design and construction will meet DelDOT's requirements; that DelDOT did suggest that the existing Cove Court entrance be relocated as part of the new entrance but does not seem feasible to do; that the Applicant will proceed with the entry from DelDOT; that there was a phase I environmental site assessment performed by Pennoni Associates Inc; that no potential environmental conditions that would impact development were identified; that Accent Environmental did a soil investigation study to determine the most appropriate location and types of storm water management facilities which was the basis for the storm water design; that a wetland delineation investigation study was performed by Environmental Resources, Inc which found two areas of wetlands on the parcel; that one area of wetlands lies on the eastern portion and one on the western portion of the parcel; that there are 8.06 acres of jurisdictional non-tidal wetlands and 3.87 acres of tidal wetlands; that there are 20.2 acres of uplands; that there are two minimum wetland road crossings necessary to link the upland areas of the properties; that crossings impact a total of .218 acres; that the delineation investigation study was submitted to Army Corps of Engineers for review and a primary jurisdiction letter was issued on Monday, June 21, 2021; the state Historical and Preservation office advised that there were no known archeological sites or national register, listed or eligible sites associated with the property; that the development is located in the Cape Henlopen School District; that fire services would be provided by Lewes/Rehoboth Fire Station on Route 24; that the proposed community will have a home owners association comprised of all the lot owners which will be responsible for enforcing the declaration of restrictions, collecting assessments, maintaining the developments streets, sidewalks, entrances, buffers, storm water management facilities and landscaping; that Section 99-17G states cul-de-sac streets should not exceed 1,000-feet in length; that the purpose of using the word should rather than shall is to indicate a recommendation not a requirement; that it is not a requirement it should not require a formal waiver; that in Section 99-3 give the Commission authority to modify or waive a requirement if strict compliance would result in hardship, unusual topography or other conditions which are not self-imposed; that this project does present unusual topography due to its wetlands; that not presenting a cul-de-sac would be a hardship due to accessibility being lost to a significant portion of the uplands, loss of accessibility to the recreational area and loss of the ability for emergency vehicles to access the Bayfront HOA; that not approving the cul-de-sac would have a devastating impact on the development; that the Applicant has proposed a condition that individual lot owners will be prohibited from using fertilizer or other chemicals to their lots, lawns or landscaping; that the enforcement of this will be the responsibility of the HOA and performed by a qualified contractor; that there is one letter of support from Janet Hill who was a previous owner of the property.

Mr. Robertson confirmed that the Application was submitted before the amendment to the ordinance; that he agrees with what was stated and that a letter was sent out to Applicant in error stating the new ordinance would apply.

The Commission found that Mr. Mark Davidson with Pennoni Associates spoke on behalf of the Applicant; that the average lot area is 8,394 square feet; that the smallest being 7,500 square feet; that the largest lot is 13,365 square feet; that the proposed density is 1.49 lots per acre; that the 3.87 acres of wetlands have the required 50-foot buffer; that the Applicant has volunteered a 25-foot building setback

from the line of the 8.06-acres of non-tidal wetland; that there is approximately 16 acres of open space which is about 57% of the property; that there will be passive-active recreation areas in the form of small casual pocket park areas that will be landscaped; that one of the park areas located in the back of the property will have an overlook pavilion and a gathering ring firepit for the residents of the community; the open space will consist of the required 20-foot-wide forested or landscape buffer per Chapter 99; that the buffer will consist of retaining the existing vegetation as well as planting additional vegetation; that the existing wooded areas along the buffer were filled in where practical to meet the intent of the code; that along certain portions of the buffer and adjacent from every single-family lot there is an additional 10-feet of land along the buffer that will be reserved to help with storm water runoff at the back of the lots; that the 20-foot forested buffer will not be used for any type of conveyance for stormwater; that it will most likely be a small swale and that they are still working within the design regarding this; that this will provide a 30-foot buffer between the backs of the lots and adjacent properties; that approximately 14.76 acres of the open space will be placed in a conservation easement; that the project will be utilized by constructed ephemeral wetlands to handle the storm water runoff; that the road right-of-way width will be a 50-foot wide minimum; that all streets will be designed by Chapter 99 of the Sussex County Code; that the street width will be 24 feet with roll curbing with curb and gutter on both sides of the road; that the road design will meet the State Fire Marshal requirements; that there will be a sidewalk located on at least one side of all the roads within the subdivision and a sidewalk located in front of every lot for pedestrian traffic; that there will be a central mailbox location at the entrance and will be designed in accordance with the US Postal Service; that there will be a pull off for residents to be able to access their mailboxes; that the pull off area will duplicate as a parking area for residents waiting on the school bus; that there was a letter submitted to the Cape Henlopen school district located in tab I of the exhibit booklet; that street lights are shown along all the roads on the preliminary site plan; that the street lights are designed not to be a nuisance to adjacent properties but provide adequate lighting and safety for the community; that access to the property is from Camp Arrowhead Road; that the right-of-way is 50 to 55-foot wide; that the project will be required to dedicate an additional 5 feet to bring it to the local road standard of a 60-foot wide right-of-way; that a 15-foot permanent easement will be established for use by The State of Delaware in the future; that a Traffic Impact Study was not required per the 2020 Sussex County DelDOT Memorandum of Understanding for land use development; the project is determined to have negligible traffic impact; that Camp Arrowhead Road is slated for a future TID project by DelDOT which will improve Camp Arrowhead Road with 11-foot travel lanes and 5-foot shoulders; that the Applicant will be providing 11-foot travel lanes, 5-foot shoulders and left turn lane into the property; that this will extend the road improvements much further past the frontage of the property; that the left turn lane will be extended for Cove Court to use to enter their subdivision; that the 11-foot travel lanes and 5-foot shoulders include the 15-foot permanent easement to The State of Delaware for future use; that the storm water design will consist of a series of proposed best management practices; that the project will propose ephemeral constructed wetlands to handle water quality requirements for the stormwater runoff management; that according to DNREC the ephemeral constructed wetlands mimics a natural wetland area to treat urban stormwater runoff by incorporating permanent pools with shallow storage areas and water tolerant vegetation; that the Applicant has met with the Soil Conservation District on September 20, 2020 and have submitted Stormwater Assessment Study to The Sussex Conservation District; that based on the FEMA Flood Insurance Rate map dated March 16, 2015 the property is located in zone X unshaded and zone AE which base elevation of elevation 5 and elevation 7; that all elevation within the preliminary site plan are based on state plain coordination and the NVADAD data that is required; that the elevations on the property range from 4 to 11; that the FEMA regulations as well as the County Zoning Code Section 115-141.4 and 5 and Ordinance 2384 will be used when applying building permits for lots that will be located within AE zones on the subdivision plan; that sanitary sewer will connect to an existing force main that runs across the front of the property; that conversations have been had with The Sussex County Engineering Department on how to provide sanitary sewer to the 42-lots; that if the project gets approval

from the Planning & Zoning Department the Applicant will be submitting for an annexation to the sanitary sewer district which is one of the requirements; that all letters are in the hearing package; that all designs will follow Chapter 110 and other ordinances of the County Code; that approvals will be through Tidewater, The Office of Drinking Water and The State Fire Marshal for drinking water a fire suppression and that a landscape plan was submitted as part of the packet; that a cul-de-sac stretch should not exceed 1,000 feet in length; a waiver was submitted for the cul-de-sac length; that the projects cul-de-sac is more of a design issue rather than a waiver issue; that 2 turn-around areas are proposed within the road system; that having the cul-de-sac will reduce to an 800-foot end section rather than 2,300 feet originally proposed.

The Commission found that Ed Launay with Environmental Resources spoke on behalf of the Applicant; that Environmental Resources did perform a Wetland Delineation Study which was reviewed and approved by the Army Corps of Engineers; that an application for a nationwide permit 14 was filed with the Army Corps of Engineers on June 22, 2021 for the proposed two road crossings; that certain criteria must meet the terms and conditions before approval is granted; that the parcel includes Federal and State regulated wetlands; that the location of the two road crossings have been positioned at the shortest distance possible to go over wetlands to access the upland area, none that involve state regulated wetlands; that the land is relatively dry; that the total impact of placing both standard subdivision roads totals 0.22 acres; that there are 14 acres that will be protected which include the tidal wetlands, non-tidal wetlands and adjacent upland forested areas; that the Applicant has included these as part of the submitted application to The Army Corps of Engineers; that the restrictive language will be placed on the Application and if approved under permit 18 will be recorded in the county land records; that the idea of a road going through a buffer or wetland area is not uncommon; that examples would be The Grove at Love Creek and Captains Way; that the Bayfront access bridge project, which involved The State and federally regulated wetlands, was approved by The Army Corps of Engineers and DNREC.

Ms. Wingate asked if the cul-de-sacs were large enough for emergency vehicles to turn around in and what material will be used for the access over the wetlands.

Mr. Davidson confirmed the cul-de-sacs are large enough for emergency vehicle turn around and that the wetlands would be filled to allow access over them.

Ms. Stevenson asked if there will be any guidelines in place as to what chemicals lot owners will be permitted to use on their lots, lawn, and landscape.

Mr. Fuqua stated a qualified professional contractor would apply fertilizer under industry standards.

Ms. Stevenson asked Mr. Whitehouse if Sussex County had any different requirements when placing a road over wetlands; that those criteria must be met so the road does not cave in.

Mr. Robertson states the Sussex County would have dimensional requirements, but the remaining requirements would fall to DNREC on how the road is constructed; that DNREC will look at the crossing of the wetland; that the County will look at the engineering and how the crossing is built in addition to DNREC.

Mr. Fuqua reminded the Commission that this is not the first time a road has been built over wetlands.

Ms. Stevenson asked if this was build-your-own or if it would be sold to a company.

Mr. Fuqua stated that was not yet known.

Ms. Stevenson asked if there would be a shelter for kids to stand under when waiting for the school bus and if trees are still planned to be kept on the lots.

Mr. Davidson stated after talking with the school district a square concrete pad will be placed at the end of the sidewalk system before reaching Camp Arrowhead Road; that this will allow children to stand on the pad and parents can pull off into the pull-off area and that selective tree clearing would take place.

The Commission found there was no one present in support of the Application.

The Commission found that Mr. Bob Valihura, Esq. spoke in opposition of the Application on behalf of the Bayfront Home Owner Association and the three dozen Bayfront home owners that also present; that his BAR number is 2638 in the State of Delaware; that an affidavit of Mr. Freeland was submitted stating the buffer on the property is inaccurately located per Section 115-193; that the buffer is located on the western side of the foot bridge of Mr. Freeland's property; that most of the marsh to the right of the property is owned by the Bayfront HOA; that butting up to the property line is a footbridge which goes over tidal wetlands; that the developer of Bayfront Properties had to obtain a subaqueous permit to place the bridge in that location; that land to the right of the foot bridge is considered tidal wetlands; that the footbridge defines where the uplands stop and tidal wetlands begin; that according to the plan the 50 foot buffer zone is located to the east of the foot bridge out in the wetlands; that the buffer zone is protecting nothing because it will be part of the marsh itself; that the real buffer zone begins at the end of the bridge; that Mr. Freeland feels the buffer should be moved; that moving the buffer zone will protect Mr. Freeland's property; that Mr. Freeland is an engineer; that the wetland line is incorrect.

Chairman Wheatley stated that the wetland line will be determined by the Army Corps of Engineers.

The Commission found that Mr. Daniel Huber spoke in opposition of the Application; that due to development there is no room for wildlife; that the S-curve on Camp Arrowhead Road and the cross-walks near Marsh Island Farm and Marsh Island Estates are very dangerous and that extra vehicles traveling this area will add to the problem.

The Commission found that Mr. Steven Counts spoke in opposition of the Application; that he presented a petition with 64 additional signatures; that an application for Salt Cedar was filed in August 2020 but was informed the name must be changed; that the name was changed to Terrapin Island and an application was submitted March 2021; that he feels there were changes made between the submission in August 2020 and March 2021; that no preliminary review was done by Planning and Zoning staff on the application for Terrapin Island in March 2021; that Applicant has requested a waiver to Article 99-17G of the Sussex County Code regarding the length of a cul-de-sac being no more than 1,000 feet; that the waiver request for a cul-de-sac that is 2,351 feet; that a single point of entry is a safety problem; that should the street be blocked at or near the point of entry it would be impossible to access one of the homes that is a half a mile away at the end of the cul-de-sac; that the international fire code states that special approval is required for single access streets that exceed 750 feet; the Sussex County Private Road Standards state that cul-de-sac streets are limited to serving no more than 300 ADTs on roads longer than 1,000 feet; that the Applicant has stated that the ADT's for this project are 468 which is 56% more than the standards provide; that the staffs review states "Per section 115-25.F.4 a permanent 25-foot setback from all non-tidal wetlands is required which prohibits paving within these areas. It appears that this will occur on multiple occasions. Please show the permanent 25-foot setback and remove all paved areas within the setback."; that the Army Corps of Engineers has no jurisdiction in the setback; that regardless of the approval of the nationwide #14 permit they cannot pave across the wetlands and

that in the Sussex County Code it states there will be no building and no paving within the setback.

Mr. Whitehouse states the stamp on the application is dated August 31, 2020; that the project was originally named Salt Cedar subdivision; that a staff review letter was sent out on December 9, 2020; that the name of the subdivision was changed, but the application and case number assigned to the project did not change; that it is not uncommon with a subdivision that there are minor revisions.

Mr. Robertson stated for clarification that the section of the Planning and Zoning staff quote was from the Superior Design requirements that came into effect after the initial application was filed; that it is not uncommon for multiple revisions of a subdivision to take place after being reviewed by different departments and agencies; and that the Application is in compliance with the Sussex County Code; that he acknowledges there was a letter sent in error; that the new ordinance was adopted in January 2021; that anything submitted before the Ordinance does not apply.

The Commission found that Ms. Laura Huber spoke in opposition of the Application; that she is representing West Bay; that the road proposed in the application would be in front of her property; that she has a concern about the lighting of the Application; that she has concerns about the two parks; that she would like to know what the red ribbons on the trees in front of her home represent, concerns about increased traffic on Camp Arrowhead Road; that she is concerned how long construction will take and why wetlands are now allowed to be built upon.

Mr. Davidson states the red ribbon is to mark the boundary line between two properties.

The Commission found that Mr. Jeff Nayda spoke in opposition to the Application; that to build the subdivision the Applicant will have to encroach on non-tidal wetlands in multiple locations, will be violating the Sussex County Code, and will be going against the Comprehensive Plan; that in December 2020 Planner Nick Torrance wrote in a letter to Pennoni, "A permanent 25-foot setback from all non-tidal wetlands is required which prohibits paving within these areas. It appears that this will occur on multiple occasions. Please show the permanent 25-foot setback and remove all paved areas within the setback."; that he is confused if the quote is appropriate for the Application or not; that he is concerned about the paving of the non-tidal wetlands; that paving is a very disruptive and invasive process; that he lives on lot 171; that the proposed road will be in his backyard and is concerned about disruption from streetlights and traffic; that he disagrees that the wetlands are mainly dry; that at times the wetlands are not able to be walked through; that he has a picture taken on October 20, 2020 of the water on the wetlands; that the water was deep enough to cover the ghost tress; that the area is a low lying area that often floods deeply; that he is concerned about filling and the effects it will have on the roots of the trees; that he is concerned about having no sidewalk or pedestrian guards on the proposed road; that he questions why a bridge cannot be built in the wetland area similar to the Bayfront Bridge; that the Environmental Resource consultant stated a bridge in the area would be impractical due to be too low and by which he admitted that a bridge would serve the same purpose as a road; that there is irony in the proposed road names for the project; that exceptions made now could terminate the wetlands in the future and how safe will the proposed road be without a guardrail.

Chairman Wheatley stated that the quote from Nick Torrance is concerning the difference between the ordinance that is in effect today and the old cluster ordinance in which the Application is being heard under currently; that the permanent 25-foot setback does not apply to the Application under the old ordinance; that there will be setbacks put into various places but that specific permanent 25-foot setback will not.

Mr. Mears questioned if Mr. Nayda had to cross a road built upon a non-tidal wetland to access his property; that based on the testimony given Mr. Nayda's development had the same type of crossing through the non-tidal wetlands.

Mr. Nayda stated he does not access his property from a road built on non-tidal wetlands that it is a bridge.

The Commission found that Ms. Janice Hurff spoke in opposition of the Application; that she lives on lot 176 and that proposed lots 23 and 24 will abutt her back fence; that DNREC has initiated a marshland restoration program; that according to data more than 2.3-feet of marsh land is lost yearly and increased the vulnerability to storm erosion; that she does not understand how roads can be built over marshland and ignore DNREC's advisory and restoration plan; that opposing programs are counterproductive; that due to the intrusion into the wetlands there will be an heightened danger of run off and flooding; that there is a wooded area to the west of Bayfront, across Camp Arrowhead Road, that reaches 30-feet in height and the water will run downhill from that area; that the length of the cul-de-sac street is not in compliance with the Sussex County Private Road Standards or the International Fire Code; that the Applicant admits to 468-trips rather than the acceptable average of 300-trips; that only one fire truck can fit into the cul-de-sac space; that she has previously experienced a fire in a cul-de-sac; that wind will increase with the removal of the trees and wind will increase the severity of a fire; that without the tree buffer homes of Bayfront and Terrapin Island are susceptible to winds stronger than found inland; that there cannot be an even transition between Bayfront and Terrapin Island as the lot size of Bayfront is .5-acres and Terrapin Island is 7,500-square feet; that Terrapin Island will burden the community with increased traffic and infrastructure needs and that Terrapin Island does not follow the Sussex County Comprehensive Plan.

The Commission found that Ms. Cathy Hudowalski spoke in opposition of the Application; that she is a resident of Bayfront adjacent from the proposed entry of Terrapin Island; that she opposes the Application for all the reason already set forth; that her concern is specific to the impact on Cove Court; that she is concerned about traffic, safety and specifically safety turn lanes for Cove Court and Terrapin Island; that there is concern for close proximity, site lines, inadequate lighting, noise and invasion of privacy; that there is often speeding and impaired driving; that the proposal to extend the 20-foot left turn lane an additional 100 feet is a reasonable accommodation with the requirements of adequate site lines and lighting; that the road is not safe even with the newly added 5-foot walking lane; that increased traffic will increase the danger on the road; that she request the condition for the developer to supply adequate street lighting as well as a condition for DelDOT to perform a Traffic Impact Study; that she request a condition that the developer supply a minimum 30-foot buffer between Cove Court and Terrapin Island as required by Section 115-25E4 of the Sussex County Code due to an inadequate transition.

The Commission found that Ms. Sue Nayda spoke in opposition of the Application; that she lives in Bayfront overlooking the area of the proposed road; that in a letter from December 2020 Planning and Zoning staff mentioned the required 30-foot buffer; that the purpose of the buffer is to provide an adequate transition in density between subdivisions; that Pennoni Associates responded to the letter in March 2021 stating the required buffer was not applicable due to even transition; that she disagrees with the statement of it being an even transition in density; that there are 7 Terrapin Island homes behind 4 Bayfront homes along with Shell Landing Way proving it is not an even transition in density; that the statistics are misleading; that based on the different characteristics of communities and the statistics shown, there is not an even transition in densities and a 30-foot buffer should be required.

The Commission found that Ms. Pat Campagna spoke in opposition of the Application; that she is concerned about the effects on Bayfront which she believes to include loss of wildlife and nesting areas, loss of privacy and loss of woodlands, increased threats of flooding due to removal of trees, the adverse effect on the beach amenities, the loss in property values, the greater likelihood of pollution to the wetlands, and negative impact to similar adjacent communities; that the project does not meet the requirements stated in Section 115-99.3; that if the project is approved that Section 115-25.4 conditions will be placed on development to protect adjacent properties and natural environment with input from all affected parties.

The Commission found that Ms. Rosiland Mailander spoke in opposition of the Application, that the parcel is environmentally fragile; that according to DNREC 80% of the property is in a special hazard flood zone; that her concern is the adequacy of the record; that the records are not fair and complete for review; that the developer did respond to the State's PLUS review but that the response was not submitted to the State for the State rebut response; that the State determined the parcel not environmentally or fiscally suitable for the project and the only way to resolve conflict is to present the developer's response to the State for review and comment.

Chairman Wheatley stated the State of Delaware has delegated land use matters to the local government; that the Commission will decide if the record is complete or not.

The Commission found that Ms. Michele Forzley spoke in opposition of the Application; that she agrees with the points already made in opposition; that she disagrees with the statement from the Applicant's attorney that the Comprehensive Plan and related strategies are not binding; that she requests the Commission to look at how the application fits within the Comprehensive Plan's principles, guiding ideas, health, and economy, and social welfare in the county; that the only exception to Investment Level 4 is if development is necessary to address unforeseen circumstances involving public health, welfare or safety; that Terrapin Island would do the opposite and cause destruction of the wetlands in the whole area around it; that it will increase traffic and DART has decided Camp Arrowhead Road and Angola Road are insufficient for bus traffic.

The Commission found that Mr. Bill Mailander spoke in opposition to the Application; that he was on the PLUS conference call and that improvements on Camp Arrowhead Road are planned but not yet scheduled; that all elements should be proven before a waiver is approved; that the calculation in Section 115-25.E.4 should not be based off a simple density calculation but requires a detailed analysis and he suggests the Commission come to see the Bayfront property.

Mr. Robertson stated that a lot of work goes into preparing for a Planning & Zoning Public Hearing and that all Commission members do visit the sites before the hearings.

The Commission found that Ms. Fran Tomkowid spoke in opposition to the Application; that she is concerned about the removal of trees and the increased flooding it would cause and that she would like to see an environmental study done to state how many trees will be left to mitigate the water.

The Commission found that Ms. Eul Lee spoke in opposition of the Application; that she is concerned about the flooding on the road and the changes it will make to the topography of the area; that she questions if there will be something in place to disperse the water and with increased flooding will flood insurance increase

Chairman Wheatley stated there would need to be something put into place some design feature that will allow the road to drain onto the Terrapin Island property and then be conveyed properly to another piece of property and that flood insurance is outside of the scope of the Commission.

Mr. Robertson stated working with FEMA, the Sussex County put in code sections that were compliant with FEMA's requirements to make sure everyone's flood insurance is preserved; that when building permits are pulled they will have to comply with every house built and that increased flooding will not affect flood insurance rates but cannot confirm any private insurance would not increase.

The Commission found that Ms. Pat Fowler spoke in opposition to the Application and her concern for increased flooding.

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

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

In relation to Application 2020-13 Terrapin Island (FKA Salt Cedars). Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

C/U 2250 – Paola Pacheco Vasquez

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a construction business, work trailer, and outdoor storage to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.968 acres, more or less. The property is lying on the northwest side of Clendaniel Rd. (S.C.R. 625), approximately 0.65 mile west of Dupont Boulevard (Rt. 113). 911 Address: None Available. Tax Parcel: 230-12.00-10.04

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the DeIDOT Service Level Analysis, a Service Level Evaluation response, a copy of staff analysis, a copy of the Applicant's Indicative Site Plan, a copy of comments received from The Sussex County Engineering Department Utility Planning Division, and have received zero comments.

The Commission found that Paola Pacheco was present on behalf of the Application, that she is the owner of the lot on Clendaniel Road; that she is requesting a Conditional Use of the land in an Agricultural Residential District to use for a small family-owned construction business; that the construction business builds concrete foundations.

Mr. Hopkins asked if there will be trailers or equipment to pour the concrete, how many employees there are if the employees drive to a central location or straight to the job sites, and if the location will be used for a residential home, what the hours of business will be and if a sign will be needed.

Ms. Pacheco stated they have mini excavators and a truck; that there are two employees, that the two employees occasionally drive to the job site; that she does plan to place a home on the parcel in the future, that the hours would be from 6:00 am to 5:00 pm and she would like to have a sign for the business.

Mr. Robertson requested more information about the surrounding neighborhood and that it looked

mostly like farmland and trees.

Ms. Pacheco stated the area is quiet; that she has never seen her neighbors and she agreed it is mostly farmland and trees in the area.

Ms. Stevenson asked if anything dangerous would be stored on the property such as chemicals, gasoline, or fuel.

Ms. Pacheco stated nothing dangerous will be stored on the property.

Chairman Wheatley asked if any work will be done on the property site.

Ms. Pacheco stated all work is performed at the job sites; that only office work and business supplies are stored at this location.

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

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

In relation to Application C/U 2250 – Paola Pacheco Vasquez. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson. Motion carried 5-0.

C/U 2254 – Richard Tilghman

An Ordinance to grant a Conditional Use of land in an GR General Residential District for an auto glass tinting shop to be located on a certain parcel of land lying in and being in Little Creek Hundred, Sussex County, containing 1.021 acres, more or less. The property is lying on north side of West Line Rd. (S.C.R. 512), approximately 0.24 mile east of Old Racetrack Road (S.C.R. 502). 911 Address: 8227 W. Line Rd., Delmar. Tax Parcel: 532-19.00-52.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Conceptual Site Plan, a copy of the DelDOT Service Level Evaluation Response, a copy of the staff analysis, a letter from The Sussex County Engineering Department Utility Planning Division, and zero comments.

The Commission found that Mr. Richard Tilghman was present on behalf of the Application, that he is applying for a Condition Use to build a 26x30 pole building to operate a window tinting business out of; that he has been in the window tinting business for 11 years and his side projects have become great enough to venture on his own; that the average job takes approximately two hours; that once the business is fully established he plans to work on up to four cars a day; that it will be about an 8-hour workday; that he plans to begin at 9:00 am but could begin as early as 7:00 am based off his customers' availability; that if a customer is waiting, the job normally takes two hours; that if he had a car for a longer timeframe it is normally dropped off the night before and picked up the day of the appointment and it is rare he would have a car overnight or more than 24 hours.

Ms. Stevenson asked how many days a week would he be open for business.

Mr. Tilghman stated five days a week.

Ms. Wingate asked if he began work at 7:00 am would the end of the workday be 5:00 pm, that he would

have up to 4 cars at a time on a lot, that the business is for tinting car and truck windows, where materials would be stored, if there would be any noise associated with his work, if Mr. Tilghman is the only employee and if a business sign is needed.

Mr. Tilghman stated 5:00 pm would end his workday, that at one time he could have up to four cars on the lot, that the business is for the tinting of vehicle windows; that all material would be stored in the pole building; that no noise will be associated with his work; that he would be the only employee; that he would like a small sign; that he does not plan to advertise near the road or publicly; that all business is by word of mouth; that he plans to start a small Facebook page but business will be by appointment only and his address will only be given after the appointment is made.

Mr. Robertson asked what the area is like and what is around the parcel.

Mr. Tilghman stated the nearest neighbor to the right of the property is about 0.5-mile down the road; that there are four manufactured homes to the left of the property and a home on the other side of the manufactured homes; that mostly the area is a lot of woods; that he has not spoken to the neighbors in the 5 years he has lived there, that he has spoken to Mr. Wiley Wise on lot 49 who did not express any opposition.

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

With no further questions, Chairman Wheatley closed the public hearing.

In relation to Application C/U 2254 – Richard Tilghman. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson. Motion carried 5-0.

Ms. Wingate recused herself from the next case and left Council Chambers.

C/U 2259 Evergreene Companies, LLC

An Ordinance to grant a Conditional Use of land in an MR Medium-Density Residential Zoning District for multi-family dwelling units (30 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less. The property is lying on the north side of Fred Hudson Road (S.C.R. 360), approximately 0.25 mile east of Cedar Neck Road (S.C.R. 357). 911 Address: N/A Tax Parcel: 134-13.00-72.02

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit booklet, a copy of the Applicant's Conceptual Site Plan, a copy of PLUS comments, a copy of the Applicant's response to the PLUS comments, a copy of the Applicant's Source Water Protection letter, a copy of the staff analysis, a copy of TAC comments including comments from DelDOT and The US Department of Agriculture, a letter from The Sussex County Engineering Department Utility Planning Division and a letter from The Division of Public Health Engineering Office, a copy of the DelDOT Service Level Evaluation, 33 letters in opposition to the application and zero mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Application, that also present were Mr. Tim Norton on behalf of the Applicant, Mr. Cliff Mumford of Davis, Bowen & Friedel, Inc. and Ed Launay with Environmental Resources, Inc; that this is an application for a Conditional Use for 30- multi-family units which would all be single-family detached condominium units; that the proposed site contains 11.96 acres; that it is located on the north side of Fred Hudson Road; that the land

is zoned Medium Residential; that in 2004 the County Council approved a Conditional Use for 48 multi-family townhouse units on the same piece of property that was filed by Inland Bays, LLC; that application has a density of 4 units per acre; that the approved site plan had a recreational area with a swimming pool, bathrooms and a tennis court located on uplands in the northeast corner of the site, and was surrounded by wetlands, that the original development, C/U 1519, did not proceed and the preliminary approval expired in 2017; that in 2010 another Conditional Use application, C/U 1850, was filed for the same plan, which was approved by County Council on September 14, 2010; that the only difference in the second approval was a condition that was recommended by the Planning & Zoning Commission; that the recreational area in the north east corner be relocated within the interior of the development and the northeast corner be left undisturbed; that in 2010 the County entered into a recession and the County Government granted some blanket extensions on all approvals; that in December 2014 the Planning Commission approved a revised preliminary site plan for the 48-unit development incorporating the changes resulting from the conditions of approval for the second approval, but expired due to not being substantially underway within the allotted time period; that the current application differs from the previous approved plans in two aspects; that rather than 48 units the current application proposes 30 units, which is a reduction in density from 4 units per acre to 2.5 units per acre; that rather than townhouses the new units will be single-family attached condominium units; that according to the PLUS comments the land is located in Investment Levels 2, 3 and 4 in the Strategies for State Policies and Spending document; that since the proposed site plan stays completely out of the Level 4 area, the State Planning Office stated in the PLUS letter that they had no objection to the proposed development; that under the 2019 Comprehensive Plan the site is located in the Coastal area; that a range of housing should be located in the Coastal area; that a density of 4- to 12-units per acre can be appropriate in certain locations; that the parcel is already zoned Medium Residential allowing up to 4 units per acre; that the purpose of the proposed application is consistent with the purpose of the Medium Residential classification; that the area of the proposed site is already urban in character; that there are a number of single-family, multi-family and commercial uses in the general area; that the site fronts onto Fred Hudson Road; that the Salt Pond Development is located to the south across Fred Hudson Road; that to the west and north of the development is the Bethany Lakes Development; that to the east of the development are the wetlands which are owned by the State of Delaware; that the most recent zoning application was a Conditional Use, C/U 2130, which was approved on October 30, 2018 for 2.38-acre parcel at the northeast corner of Cedar Neck Road and Fred Hudson Road; that the Conditional Use was approved by the County Council for 16-multi-family units, which was a density of 6.7 units per acre; that the current site contains a large area of non-tidal wetlands, with some uplands on the eastern side; that the western side of the site is uplands which is the area to be developed; that the wetland area will be undisturbed and physically will remain in their existing condition; that the development is in a County operated sewer district and waste water capacity is available; that the system design assumption for the parcel is 4-units per acre; that Sussex Shores Water Company will provide central water for domestic use and fire protection; that the site is in the area of the Millville Volunteer Fire Company and the Indian River School District; that storm water management facilities will be designed and constructed in accordance with DNREC's regulations and approved by the Sussex Conservation District; that the wetlands were delineated by Environmental Resources, Inc; that the delineation determined that the site contained 6 acres of non-tidal wetlands; that in response to the Service Level Evaluation request DelDOT determined that a Traffic Impact Study was not warranted and did not require a TIS; that DelDOT states that the developments traffic impact would be negligible, as stated in the letter from October 8, 2020; that DelDOT will hold the Applicant responsible for dedicating additional right-of-way along the site frontage to provide 40-foot right-of-way from center line of Fred Hudson Road and a 15-foot easement along the right-of-away on the site's side of the road; that the entrance will be designed in accordance with DelDOT's requirements; that improvements at the entrance will include a right turn with a deceleration lane, left turn lane, and construction of a shared

use path along the site frontage; that there is one cul-de-sac street coming in from Fred Hudson Road; that a 16-single-family condominium unit will be located to the west side of that road and 14 units on the east side of the street; that since all units are part of a condominium all land will be a common element of the condominium with all lawn and landscaping maintenance the responsibility of the Condo Association; that there is a proposed condition stating homeowners will be prohibited from applying fertilizer to lawns and landscaping; that fertilizer application will be the responsibility of the Condo Association using best management practices by a qualified professional; that there will be a recreational area to the east side of the road, between units 5 and 6; that proposed is a swimming pool with deck, bathrooms, storage area and central mailbox facility; that each unit will have the capacity for four parking spaces which would consist of two spaces in the garage and two spaces in the driveway; that there will be an additional seven parking spaces in front of the recreational area; that sidewalks are proposed along the east side of the street, which is the side the recreational area is located; that storm water ponds will be located as shown on the site plan; that there will be a minimum of a 10-foot building setback from the non-tidal wetland line; that the average setback is significantly greater than this and all wetlands will remain undisturbed; that there is one building that will maintain at least a 10-foot setback and all others buildings are at a larger setback; that there is no specific setback stated from non-tidal wetlands; that the western boundary and half of the northern boundary of the site that borders the Bethany Lakes development will have a 20-foot landscape buffer as designed in the zoning code; that the buffer will run the entire length of the western side and on the northern side will run until the wetlands begin; that there is an existing line of poplar trees located along the western boundary and will be retained and incorporated as part of the landscape buffer; that a split-rail or similar type of fence will be installed around the western and western half of the northern boundary line of the site; that the poplar trees and fencing were two items of conditions of approval in the 2010 Conditional Use; that there were a number of opposition comments; that a statement of opposition was made stating there was 9.2 acres of the site is woodlands or wetlands and should not be utilized when determining density; that tidal wetlands cannot be used to determine density but all wetlands located on the property are considered non-tidal wetlands which have always been permitted to use for density calculations; that 2 acres of the existing 9.2 acres of woodlands will be removed, leaving 7.38 acres undisturbed as part of the wetland areas; that there were some questions raised about runoff and flooding in the area; that the development of the storm water management system will be designed and constructed in accordance with DNREC regulations which will be reviewed and approved by the Conservation District; that under the regulations of DNREC storm water runoff on the site cannot run off or flood adjacent properties; that runoff must be captured and contained on site in accordance to the regulations; that there was a statement made that DelDOT did not require a TIS but did recommend one; that the DelDOT comments in the PLUS letter of December 18, 2020 state that based on DelDOT's Development Coordination Manual a TIS is not warranted; that stated in DelDOT County Coordinator, Mr. Brockenbrough's letter on October 8, 2020 stated that because vehicle trips do not meet TIS warrants DelDOT considers the development's impact to be negligible in the context of DelDOT's agreement with the County regarding land development coordination and DelDOT recommends the Applicant not be required to perform a TIS on the application; that the proposed Conditional Use fully complies with land use regulations and is character with the nature of the area and the proposed 30 single-family detached condominium units are a significant reduction in the 48 unit density previously approved on two previous applications.

Ms. Stevenson questioned if there would be any restrictive covenants placed to prohibit weekly rentals and that she would prefer the design at 15 duplexes rather than 30 single-family units.

Mr. Fuqua stated a restrictive covenant would not be needed as that will be included in the condominium document; that the issue is not considered a land-use issue and he cannot answer the question and that from a marketing point of view most people do not want someone living right next to them.

The Commission found that Mr. Peter Hartogensis spoke in opposition to the Application; that he is the president of Bethany Lakes Home Owners Association; that he is concerned about traffic with only one outlet onto Fred Hudson Road; that Fred Hudson Road is already narrow and congested which increases in the summertime; that the lower part of Fred Hudson Road is subject to frequent flooding; that adding traffic will make the issues worse; that although the developer estimates 34 vehicle trips per day which is below the minimum 500 trips per day to require a TIS, but he feels that in the summer there will be more than 343 trips per day; that if the Application were to be approved he requests that the Commission make a requirement for a Traffic Impact Study; that the proposed Application is incompatible with Bethany Lakes subdivision; that the County Council already approved 16 town homes on the corner of Bethany Lakes; that if the Application is approved Bethany Lakes will be sandwiched in between homes that are much smaller and much more numerous than the land they occupy; that the Bethany Lakes subdivision feels that the land should be given to the park system and add to the existing park and if not that 3 or 4 substantial homes should be built that would be similar in character to Bethany Lakes; that previously there were issues with Evergreene Companies development on the corner of Bethany Lakes; and that Commission had required a buffer of trees between the area conjoining the developments however the trees were cut down; that letters were written pointing this out to the Commission.

The Commission found that Mr. Thomas Haug spoke in opposition of the Application; that he has concerns about the water runoff; that tidal wetlands and non-tidal wetlands are both still considered wetlands; that Department of Natural Resources stated that 80-90% of the land in question is a very poorly drained wetland associated soils making residents and adjoining properties susceptible to flooding problems; that DNREC previously stated that the position location on such soil is in an apparent violation with County Building Code; that cutting 2-acres of trees will not help the situation of flooding; that he questions is it okay to take the wetlands as a diversion for the ponds, adding more water into the wetlands; that the 16 homes located 20-feet away from the Bethany Lakes swales, will not drain into the road but rather drain into the swales; that he requests the developer consider piping to divert the runoff water elsewhere and he does not have faith that the developer will abide by keeping the proposed buffer as they tore down the forested buffer in the past.

The Commission found that Mr. Steve Guthrie spoke in opposition of the Application; that he is concerned that the stormwater management plan has not been developed yet and feels it should be presented in the public hearing; that he is concerned about traffic; that Fred Hudson Road is very heavily used and is subject to frequent back-ups; that he requests the Commission to ignore the DelDOT assumption that a TIS is not needed; that an addition of 30 extra houses added to the recently approved 16 houses to the already overcrowded road system is a concern; that he is not opposed to the development of the property and he feels the number of houses should be reduced.

The Commission found that Mr. Ken Whitmore spoke in opposition to the Application; that he opposes development that would limit the value of what is cherished in the area.

Chairman Wheatley asked Mr. Robertson what ability the Commission has regarding the preserving of trees.

Mr. Robertson stated that with the situation as described in the past it has been a lesson learned; that the Commission is no longer taking people's word; that the Commission now makes conditions; that the Commission has improved and clarified the language of what is required for the buffers and what must be shown on the site plan and what will be preserved; that there is a provision in the zoning code for fines, but fines do not bring trees back; that building permits can be held to prohibit further site work particularly if it is a condition that has been breached; that if a condition is breached the Commission

can revoke the Conditional Use and the Applicant would have to begin the process over again; that on the front end it has been designed with more specificity in condition to make it less likely to happen.

The Commission found that Ms. Susan Fisher spoke by teleconference in opposition to the Application; that she read on page 48 of the online packet that 2.69 acres will be cleared, which is more than the 2.1 acres Mr. Fuqua had stated and requested clarification; that she is concerned about the cutting down of trees and the preservation of the remaining trees during construction, flooding, and water runoff and that the two properties do not have a transition of density and concern of structural damage to her home from the pounding during the construction.

Mr. Mears stated that piling drivers are now hydraulic; that he has driven pilings within 14 feet of the neighbors with no damage and he does not foresee that being an issue.

Ms. Stevenson stated a concern regarding a bus stop or a place for kids to stand and that she does not want the kids standing in the rain.

The Commission found that Mr. Cliff Mumford with Davis, Bowen & Friedel, Inc stated after speaking with The Indian River School District it was recommended to use the right turn lane for a bus stop and the shared-use path as a waiting area for the children.

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

In relation to Application C/U 2259 – Evergreene Companies, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson. Motion carried 5-0.

Ms. Wingate returned to Chambers for the conclusion of the meeting.

Meeting adjourned at 11:20 p.m.

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