

MINUTES REVISED AND APPROVED ON 10/28/2021

THE MINUTES OF THE REGULAR MEETING OF JULY 8, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, July 8, 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 Sharp – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, and Mr. Nicholas Torrance – Planner I.

ADDITIONAL BUSINESS

Annual Administration of Oaths – Mr. Robertson administered Oaths to the Planning and Zoning Commission Members.

REORGANIZATION

Chairman Wheatley announced that Mr. Whitehouse, Planning & Zoning Director would act as Chair for the purpose of electing a Chair, Vice-Chair, and electing Officers.

Mr. Whitehouse opened nominations for the Chairperson.

Mr. Mears nominated Mr. Wheatley as Chairman. There was no other nomination for Chairman.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, that the nominations for Chairman be closed. Motion carried 5-0.

Vote to close nominations by roll call: Ms. Stevenson-yea, Mr. Hopkins-yea, Ms. Wingate-yea, Mr. Mears-yea, Mr. Wheatley-yea.

Motion by Ms. Stevenson to elect Mr. Wheatley as Chairman, seconded by Mr. Hopkins. Motion carried 5-0.

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

Mr. Whitehouse opened nominations for Vice-Chair.

Ms. Wingate nominated Ms. Stevenson as Vice-Chair. There were no other nominations for Vice-Chair.

Motion by Mr. Hopkins, seconded by Mr. Wheatley, that the nominations for Vice-Chair be closed. Motion carried 5-0.

Vote to close nominations by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea, Ms. Stevenson-yea.

Motion by Mr. Hopkins, seconded by Mr. Wheatley to elect Ms. Stevenson as Vice-Chair. Motion carried 5-0.

Vote Ms. Stevenson as Vice-Chair by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea, Ms. Stevenson-yea.

Mr. Whitehouse turned the meeting over to Chairman Wheatley as the now elected Chairman of the Planning & Zoning Commission.

Motion by Ms. Stevenson to authorize the Planning and Zoning Director, the Director of Planning and Zoning, or the Assistant Director of Planning and Zoning, and his or her designees to sign Record Plans on behalf of the Commission.

Motion by Ms. Stevenson seconded by Mr. Mears and carried unanimously to approve the authorized Plan signers as stated in the motion. Motion carried 5-0.

Mr. Whitehouse noted that the agenda was changed to remove CZ 1933 and CZ 1934 which will be heard at a future meeting. Mr. Whitehouse also noted that Old Business item CU 2236 – Carl M. Freeman Companies be considered before Other Business. Motion by Ms. Wingate seconded by Ms. Stevenson and carried unanimously to approve the Revised Agenda. Motion carried 5-0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the June 10, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 5-0

OLD BUSINESS

Ms. Wingate recused herself from this case. Mr. Robertson recused himself from this case. Mr. Sharp was present for this case.

Mr. Hopkins stated he was not present for the Public Hearing but he has reviewed the Application material and is prepared to vote.

C/U 2236 – Carl M. Freeman Companies

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a hotel and restaurant to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.2 acres, more or less. The property is lying on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route 1). 911 Address: N/A. Tax Parcel: 533-20.00-22.00 & 20.00 (Portion of).

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

Mr. Mears moved that the Commission recommend denial of C/U # 2236 for **CARL M. FREEMAN COMPANIES** for a Hotel and Restaurant based upon the record made during the public hearing and for the following reasons:

1. While the site is designated as Coastal Area on the Comprehensive Plan, the proposed hotel and restaurant are too intensive for the area. It is not compatible, and would be out of character, with the surrounding properties, and does not promote the orderly growth, convenience, prosperity, and welfare of the County.
2. The parcel consists of approximately 9.2 acres and the Applicant proposes to develop the parcel with a 70-room hotel and an 8,500 square foot restaurant. The parcel was formerly part of a larger parcel which was largely undeveloped and contained significant wetlands areas but is now otherwise being developed for a 70-lot subdivision.
3. As noted above, this use is too intensive and inappropriate for the site particularly since the site is environmentally sensitive. The site is just west of the "Ditch" that connects the Little Assawoman Bay from the Big Assawoman Bay. The Applicant has acknowledged that the site has 4.89 acres of federal and state wetlands. In the PLUS review, DNREC noted that the entire parcel has wetland associated hydric soils and will be significantly impacted by permanent inundation of future sea level rise. Nearly all of the parcel is situated within the 100-year floodplain.
4. The use is not a residential project and is a commercial enterprise in the middle of a predominantly residential area. The proposed hotel and restaurant are not in character with surrounding uses and, therefore, are incompatible.
5. The application is not essential or desirable for the general convenience and welfare of the area where it is located. This project will result in significant increases in traffic congestion in an area that is already congested.
6. The Application does not promote the health, safety and general welfare of the public in that increases in emergency response time will result due to increased traffic which will adversely affect the care of residents in the area; particularly since there are few ways to reach nearby Fenwick Island.
7. Based on the record, the Application would be detrimental to the health, safety, and general welfare of the public, neighboring property owners, and pedestrians and motorists in the area in that much of the surrounding area consists of residential developments of various sorts; that the proposed hotel is not residential in nature and rather, is a commercial venture designed to attract transient vacationing guests to the area; that the restaurant is also a commercial use; that the site is located in a flood zone; and that the project will put current residents in the area, as well as emergency response teams, at risk in the event of evacuations or emergencies.
8. Based on the record, the proposed use, which includes outdoor recreation space and outdoor restaurant seating with music, will create an increase in noise level which, along with increased traffic concerns, will be disruptive to the residents in the vicinity and is not compatible with the existing residential uses that largely surround the property.
9. The Applicant's proposal will result in fewer parking spaces than is required by Code, and the proposed shared parking proposals would not be likely to address this shortfall. This area is already congested and the reduction of parking spaces will likely exacerbate the area's congestion and will negatively affect the character of the neighborhood.
10. The Commission received 160 letters and emails, some of which may be duplicates, expressing opposition to the project. These communications have come from parties who live in the surrounding communities. Finally, there were 26 people present at the Planning and Zoning Commission public hearing in opposition to the Application.
11. For all of these reasons, I recommend a denial of this Conditional Use.

The motion by Mr. Mears, seconded by Ms. Stevenson to recommend denial of C/U 2236 for Carl M. Freeman Companies failed.

Roll call vote: Mr. Mears-yea, Mr. Wheatley-nay, Mr. Hopkins-nay, Ms. Stevenson-yea.

Mr. Sharp stated that pursuant to 5.5 of the Planning and Zoning Commission Rules of Procedure three affirmative votes shall be required to approve any matter within the jurisdiction of the Planning and Zoning Commission. The case will be forwarded to County Council without a motion.

OTHER BUSINESS

Heron Bay Subdivision (2003-14)

Request to Amend Conditions of Approval

This is a Request to Amend the Conditions of Approval for the previously approved Heron Bay Subdivision. The Final Subdivision Plan for Heron Bay was approved by the Planning & Zoning Commission at their meeting of Thursday, May 12, 2005. Specifically, the request is to strike the condition that states, *“The Applicant has agreed to install a multi-modal paved path throughout the project that will be 5 feet wide and separated from the streets by a 3-foot wide grass area.”* A signed agreement for the removal of sidewalks has been agreed upon by the HOA and the Developer and the signed agreement has been included in the paperless packet. Tax Parcels: 234-5.00 Parcels 211.00 through 541.00. Zoning: AR-1 (Agricultural Residential) Zoning District.

The Commission discussed the request to Amend Conditions of Approval.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to defer action for receipt of a vote by the homeowners showing that 75% of homeowners agree to the amendment. Motion carried 5-0.

Hailey’s Glen (2017-17) (F.K.A. Kielbasa)

Request to Amend Conditions of Approval

This is a Request to Amend the Conditions of Approval for the previously approved Hailey’s Glen Subdivision, a cluster subdivision consisting of sixty-seven (67) lots with private roads, open space, and other related amenities. The Final Subdivision Plan for Hailey’s Glen was approved by the Planning and Zoning Commission at their meeting of Thursday, May 27, 2021. Specifically, the request is to amend Condition “K” which currently states, “Deliveries of dirt, fill or other similar materials shall only be made to or from the site between the hours of 8:00 A.M. through 5:00 P.M., Monday through Friday,” to read, “Deliveries of dirt, fill or other similar materials shall only be made to or from the site between the hours of 7:00 A.M. through 5:00 P.M., Monday through Saturdays.” A copy of the written request has been included in the paperless packet. Tax Parcel: 234-12.00-11.00. Zoning: AR-1 (Agricultural Residential) Zoning District.

Motion by Mr. Mears seconded by Ms. Wingate and carried unanimously to partially approve the Request to Amend Conditions of Approval. Condition K shall state “Deliveries of dirt, fill or other similar materials shall only be made to or from the site between the hours of 7:00 A.M. through 5:00 P.M., Monday through Friday. No Saturday or Sunday hours are permitted.” A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction. Motion carried 5-0.

Weston Willows Commercial Outparcels (S-17-31)

Preliminary Site Plan

This is a Preliminary Site Plan for Commercial Outparcel A of the Weston Willows property for the subdivision of a 26.737 acre +/- parcel into three parcels consisting of 2.197 acres +/-, 1.718 acres +/-

and residual lands comprising 22.822 acres. Outparcel A will contain only commercially leased buildings, with access off a 30-ft ingress/egress access easement located on the northwest side of what will be known as Besche Avenue. Staff notes that the applicants state that interconnectivity between adjoining commercial parcels is not possible due to an existing tax ditch ROW along the western property line and existing wetlands along the eastern property line. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 135-11.00-33.00 Zoning: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

The Commission discussed the Preliminary Site Plan.

Motion by Ms. Stevenson seconded by Ms. Wingate and carried unanimously to take no action. Motion carried 5-0.

Cleanbay Renewables, LLC (S-19-37 & CU 2113)

Preliminary Site Plan

This is a Preliminary Site Plan for a 2 MW power generation facility for renewable electricity and nutrient recovery and other site improvements to be located on the south side of DuPont Boulevard (Route 113). The Sussex County Council approved Conditional Use No. 2213 at their meeting of Tuesday, July 31, 2018, and this use was adopted through Ordinance No. 2589. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 133-6.00-123.00. Zoning: AR-1 (Agricultural Residential) Zoning District. Staff are in receipt of all agency approvals.

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

Good Earth Market (S-20-47)

Revised Final Site Plan

This is a Revised Final Site Plan for the establishment of a 5,200 square feet one-story Theater Building to an existing site. The property is located on the south side of Atlantic Avenue (Route 26) off Good Earth Lane. This plan is a revision to the Preliminary Site Plan that was first reviewed and approved by the Planning and Zoning Commission at their meeting of Thursday, June 14, 2018. This plan complies with the Sussex County Zoning Code. Tax Parcels: 134-11.00-181.02 & 181.03. Zoning: CR-1 (Commercial Residential) Zoning District. Staff are in receipt of all agency approvals

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

Bayhealth Campus Route 9 (S-21-10)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 48,500 square feet medical office building, 287 parking spaces, and other site improvements to be located on the northwest corner of Lewes Georgetown Highway (Route 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 Revised Preliminary Site Plan was first reviewed and deferred by the Planning and Zoning Commission at their meeting of Thursday, June 24, 2021. The Revised Preliminary Site Plan was deferred in order for the applicant to provide more information on the site layout,

landscaping & lighting. 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 Mr. Hopkins and carried unanimously to take no action to allow engineers to incorporate suggestions made by the Planning and Zoning Department into the site plan. Motion carried 5-0.

Lands of American Cedar & Millwork

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a 9,900 square feet one-story showroom/storage building to an existing site. The property is located on the southwest side of Coastal Highway (Route. 1) off American Way. This plan is a revision to the Preliminary Site Plan that was first reviewed and approved by the Planning and Zoning Commission at their meeting of Thursday, November 6, 2003. This plan complies with the Sussex County Zoning Code. Tax Parcels: 334-6.00-487.00, 488.00, & 489.00. Zoning: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals

Motion by Ms. Stevenson seconded by Ms. Wingate and carried unanimously to take no action for further information on the possibility of interconnectivity between the property side and neighboring properties. Motion carried 5-0.

OLD BUSINESS

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 Road (S.C.R. 277). Tax Parcel: 234-18.00-31.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since June 24, 2021.

Mr. Mears moved that the Commission grant preliminary approval of Subdivision **2020-13** for **TERRAPIN ISLAND (FKA Salt Cedars)** based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Coastal Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 42 lots on 32.13 acres. This density of approximately 49 units per acre is lower than the maximum density that is permitted in the AR-1 zone and in the Coastal Area.
3. This subdivision is located between Bay Front at Rehoboth, which is similar in many respects to this subdivision and a higher density manufactured home and RV park. This is an appropriate location for an infill subdivision such as this.
4. The proposed development will comply with all DelDOT roadway and entrance requirements.
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 subdivision contains approximately 16.14 acres of open space, which represents nearly 57% of the site.

7. The project will be served by central water and sewer.
8. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
9. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space and buffering that would not be achieved within a standard subdivision.
10. The development complies with the requirements of the Coastal Area and the Applicant has performed a wetlands delineation and an “Environmental Assessment of Public Facilities Evaluation RepoRoute” The results of those reports are taken into account in the design of the subdivision.
11. This preliminary approval is subject to the following:
 - a. There shall be no more than 42 lots within the subdivision.
 - b. The Final Site Plan shall confirm that at least 57% of the site remains as open space.
 - c. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - d. 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.
 - e. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this subdivision, except wetland areas. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. In addition, there shall be a 10-foot-wide area set aside between the perimeter buffer and any lot to be utilized for stormwater conveyance.
 - f. Common area land of the adjacent Bay Front at Rehoboth wraps around this site, including Bay Front at Rehoboth’s direct access to Rehoboth Bay. The Final Site Plan for this subdivision shall provide a vehicle connection from its eastern cul-de-sac to the property line of Bay Front at Rehoboth’s beach area for that HOA’s vehicular use for beach area maintenance, sand replenishment, and emergency vehicle accessibility.
 - g. As proffered by the Applicant, there shall be a sidewalk connection to the property line of the isolated section of Bay Front at Rehoboth containing Cove Court and Lots 178, 179, and 180.
 - h. There shall be a buffer that is at least 50 feet wide from the mean high-water line of all tidal waters, tidal tributary streams, tidal wetlands, perennial rivers, and nontidal streams. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
 - i. In addition to the buffer required in Condition H above, there shall be a 25-foot building setback from all non-tidal wetlands.
 - j. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - k. As proffered by the Applicant, sidewalks shall be installed on at least one side of all internal

streets. A system of fully shielded and downward-screened streetlighting shall also be provided.

- l. The subdivision shall be served by a central sewer system.
- m. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- n. The street design shall meet or exceed Sussex County standards. The design of the Brackish Drive cul-de-sac, including the location of the turn-out/turnaround areas, shall be subject to the review and approval of the Sussex County Engineering Department and the Office of the State Fire Marshall.
- o. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- p. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- q. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- r. As proffered by the Applicant, the Final Site Plan and recorded Declaration of Restrictions for the subdivision shall prohibit the application of fertilizers or similar soil additives on the property by the owners of the individual lots within the subdivision. All fertilizer applications shall be managed and applied by the HOA and its contractors to industry standards using Best Management Practices to minimize the risk of runoff into the stormwater management system, wetlands, and the Inland Bays.
- s. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided the preservation of all buffer areas and the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- t. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- u. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- v. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve Subdivision 2020-13 for Terrapin Island (FKA Salt Cedars), for the reasons and conditions stated in the motion. 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 Road (S.C.R. 625), approximately 0.65 mile west of Dupont Boulevard (Route 113). 911 Address: None Available. Tax Parcel: 230-12.00-10.04

The Commission discussed this application which has been deferred since June 24, 2021.

Mr. Hopkins moved that the Commission recommend approval of **C/U # 2250** for **PAOLA PACHECO VASQUEZ** for a construction business, work trailer and outdoor storage based upon the record made during the public hearing and for the following reasons:

1. The Applicant is in the business of constructing concrete foundations and footers for new buildings. There is a need for this type of use in Sussex County.
2. There will be no retail sales or similar business conducted from the site. It will only be used for storage of equipment associated with the Applicant's construction business.
3. The Applicant has stated that all work is performed offsite and that there will not be any dumping or storage of concrete or similar materials on the site.
4. The use does not require any regular deliveries. The only traffic is typically in the morning and afternoon when employees take the equipment to offsite job locations.
5. With the conditions and limitations of this approval, the use of the site for storage purposes will not adversely affect neighboring properties, roadways, or traffic.
6. The applicant has stated that his company provides a service to the construction industry in Sussex County. This use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.
7. This recommendation is subject to the following conditions:
 - a. This use shall be limited to the Applicant's construction business with work trailer and equipment storage. No retail sales or other business shall be conducted from the site.
 - b. No manufacturing or concrete mixing shall occur on the site. This prohibition includes the shredding or grinding of any materials.
 - c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - d. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - e. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
 - f. There shall be no dumping or storage of concrete or similar materials on the site.
 - g. All maintenance of vehicles and equipment shall be performed indoors or off-site.
 - h. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
 - i. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2250 for Paola Pacheco Vasquez for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/U 2254 – Richard Tilghman

An Ordinance to grant a Conditional Use of land in a 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 the north side of West Line Road (S.C.R. 512), approximately 0.24 mile east of Old Racetrack Road (S.C.R. 502). 911 Address: 8227 W. Line Road, Delmar. Tax Parcel: 532-19.00-52.00

The Commission discussed this application which has been deferred since June 24, 2021.

Ms. Wingate moved that the Commission recommend approval of C/U # **2254** for **RICHARD TILGHMAN, JR.** and **KELSEY R. DICKERSON** for an auto glass tinting shop based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for a small glass-tinting business to occur within an existing pole building.
2. The Applicant has stated that there will only be three to four cars serviced at any one time and the use will not require extensive deliveries to or from the site. As a result, the use will not generate a significant amount of traffic.
3. The use does not generate any noise or odors.
4. The Applicant has stated that all materials will be stored inside.
5. The use will not adversely affect neighboring properties.
6. No parties appeared in opposition to the application.
7. This recommendation is subject to the following conditions:
 - a. The use shall be limited to a glass-tinting business. No other uses or sales shall occur on the property.
 - b. The glass-tinting operation shall only occur within the existing pole building, and all materials shall be stored within the building.
 - c. The hours of operation shall be limited to 7:00 a.m. until 5:00 p.m.
 - d. Signage shall be limited to one lighted sign along the roadway not to exceed thirty-two (32) square feet in size.
 - e. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
 - f. All entrances shall be subject to all DelDOT requirements.
 - g. Failure to comply with any of these conditions of approval shall be grounds for termination of this conditional use approval.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2254 for Richard Tilghman, Jr. and Kelsey R. Dickerson for the reasons and conditions stated in the motion. Motion carried 5 – 0.

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 clarified that there have been no Notice of Violations issued for Conditional Use No. 2130, which is the Coastal Corner parcel located at the intersection of Fred Hudson Road and Cedar Neck Road.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried to defer for further consideration for C/U 2259 Evergreene Companies, LLC. Motion carried 4 – 0. Ms. Wingate abstained.

PUBLIC HEARINGS

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

2021-14 Lands of Moore

A standard subdivision to divide 23.635 acres +/- into 3 single family lots which includes a lot line adjustment to add 4.57 acres and 0.5 acres to 2 existing lots to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County. The property is lying on the north side of Cardinal Road (S.C.R. 452), approximately 690 feet west of Robin Hood Road (S.C.R. 453). Tax Parcel: 532-14.00-36.00, 36.04, and 36.05. Zoning District: AR-1 (Agricultural Residential District) and GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the subdivision plan, a copy of a waiver request from the Applicant, a copy of the Chapter 99-9C response, a letter from The Sussex County Engineering Department Utility Planning Division, a copy of the staff review letter, a copy of the Soil Feasibility Study; that the Soil Feasibility Study was received after the publication of the paperless packet; that paper copies of the Soil Feasibility Study have been circulated and there have been zero comments received.

The Commission found that Mr. Adam Singleton was present on behalf of the Applicant, Lands of Moore.

Ms. Wingate asked if there will be a Homeowners Association and she is concerned about the shared use access drives.

Mr. Singleton stated there will not be a Homeowners Association; that the shared use access drives are a mistake the surveyor placed on the site plan and that with the driveway entrance application to DelDOT requested a change and DelDOT stated they would have the final approval.

Ms. Stevenson questioned if the Application will affect the local schools, water systems, or roadways.

Mr. Singleton stated he did not feel the Application would adversely affect local schools, water systems, or roadways.

Mr. Robertson questioned if the lots comply with Chapter 99 of The Sussex County Code.

Mr. Whitehouse stated there was a waiver request letter included in the submission which requested the topography requirements as there was no topography shown on the drawing and a waiver request for a forested buffer and that all lot sizes and dimensions do comply with The Sussex County Code within the Agricultural Residential Zoning District.

Ms. Stevenson questioned if the proposed Application was for all residents to have their own, individual driveway; that if DelDOT denies the request there must be a shared driveway; that The Commission will request that the Applicant have some type of an agreement to whom will be responsible for the driveway.

Mr. Singleton stated he understood and agreed.

The Commission found that Mr. Jon Theil presented with questions about the Application with concerns of flooding and stormwater runoff which is affecting his farmland and he questions what type of houses will be placed on the lots.

Mr. Singleton stated there will not be an HOA; that there are current plans in motion; that the homes will be stick-built and will not be modular homes; that the home's size is estimated at 2,000-square feet; that there is a ditch at the front of the properties, facing Cardinal Road, that flooding and stormwater runoff should flow to the tax ditches in the back of the property.

The Commission found that Mr. Michael Hurley spoke in opposition of the Application with concern to any further development; that he questions if more lots will be sold or if more lots can be sold; that he questions if the leeway to the right-hand side of the border, facing directly west, will be permitted for future development; that the leeway is currently allowing access for farm equipment; that he would like clarification of what is being proposed and questions where the addition of 4.57 acres will take place.

Chairman Wheatley stated it is a right-a-way to the public street; that at this time it may be used for farm equipment but if the back parcel were ever developed, it could also be used for vehicle access, and another Public Hearing would be required before further development would be permitted.

Mr. Whitehouse stated proposed is a lot line revision; that it is shown on the site plan with the dashed line; that the 4.57-acres is being added to Lot 5 and would result in Lot 5A; that Lot 5A would be a total of 5.619-acres.

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

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

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

Ms. Wingate moved that the Commission approve 2021-14 – Lands of Moore Subdivision based upon the record made during the public hearing and for the following reasons:

1. This subdivision seeks to create 3 single-family lots by modifying the lot lines of 2 existing lots on the property.
2. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
3. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 3 lots on 23.635 acres of land is significantly less than the allowable density.
4. The proposed subdivision favorably addresses the requirements of Section 99-9C of the Subdivision Code and complies with the technical requirements of the Subdivision Code.
5. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
6. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.

7. The proposed subdivision will not adversely affect traffic on area roadways.
8. Given the small number of lots in this subdivision, a waiver from the buffer requirements is appropriate.
9. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than 3 lots within the subdivision. Any further subdivision will require another public hearing.
 - b. All entrances shall comply with all of DelDOT's requirements.
 - c. There shall be a maintenance and access agreement recorded with the Final Site Plan to provide for the perpetual maintenance of any shared access to these lots.
 - d. The Final Site Plan must show the Tax Ditch and the Tax Ditch Right of Way.
 - e. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant approval for the subdivision for the reasons stated in the Motion. Motion carried 5-0.

2021-16 Lands of Kathy Lingo

A standard subdivision to divide 3.59 acres +/- into 2 single-family lots to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County. The property is lying on the west side of E Trap Pond Road (S.C.R. 62), approximately 0.74 mile southwest of Parker Road (S.C.R. 469). Tax Parcel: 135-19.00-50.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Subdivision Plan, a copy of a submitted waiver request from the Applicant, a copy of a letter from Sussex County Engineering Department Utility Planning Division, a copy of the staff review letter, a copy of the Soil Feasibility Study and have received zero comments.

The Commission found that Mr. John Roach was present on behalf of the Applicant, Lands of Kathy Lingo; that this is to subdivide a 3.59-acre parcel located on Trap Pond Road in Georgetown; that the parcel is partly wooded and partly open; that the Applicant owns a single home located in the front of the property with an entrance to the east of the property; that there is a wooded area to the back left of the property that the Applicant would use for the lot subdivision; that the Applicant would like the subdivision to have a separate entrance to help channelize traffic; that due to the request of a second entranceway the Applicant is requesting a major subdivision and requesting a waiver of street construction and buffers.

Ms. Stevenson asked if the Application will adversely affect any local schools, roads, water, neighbors and that if the two entrances are not approved, The Commission will request a Shared Use Agreement.

Mr. Roach stated he believed the proposed Application would not adversely affect schools, roads, water, or neighbors.

Mr. Robertson requested confirmation that the proposed lots comply with the Subdivision Code of Sussex County.

Mr. Whitehouse stated in terms of the geometry the Application does comply with the Subdivision Code of the Zoning District; that due to the waiver request the topography is not shown in terms of bulk grading for the parcels and the buffer requirements.

The Commission found that Mr. Joseph Gordon presented with a concern about the waiver for the left-side easement which is next to this property; that his children play along that portion of the property;

that he requests the easement be located on the other side of the property; that there are some ditches located on the property and that if any of the trees were to be removed along his property, he feels the value of his property will decrease.

Mr. Roach stated that if needed there is room to move the entrance; that there is a large ditch out front that runs down the Applicant's driveway to Mr. Gordon's entrance allowing room to move the entrance; that this decision would be up to the Applicant.

The Commission found that Ms. Kathy Lingo spoke on behalf of the Application; that she was trying to keep the easement to the edge of the parcel rather than the center of the parcel; that the driveway will be 30-foot wide; that the driveway will not be up against the property; that it will be located on the opposite side of the easement; that it is a residential property and she does not foresee the coming and going of many vehicles.

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

Mr. Whitehouse stated the proposed access easement is located in its current location because Lot A requires 100-feet of frontage; that if there is any alteration to the location of the easement there would be some geometry concerns that the Commission would need to look into to confirm the reconfigured parcels achieve the necessary frontage; that in the County Code configuration it complies with no need for a variance; that if the easement was relocated further to the east, it would still require 100-foot frontage and that it is possible to revise the easement.

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

At the conclusion of the Public Hearing, the Commission discussed the Application. Mr. Hopkins moved that the Commission grant preliminary approval for the subdivision 2021-16 Lands of Kathy Lingo Subdivision based upon the record made during the public hearing and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 2 lots on 3.59 acres of land is significantly less than the allowable density.
3. The proposed subdivision favorably addresses the requirements of Section 99-9C of the Subdivision Code and complies with the technical requirements of the Subdivision Code.
4. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. Given the small number of lots in this subdivision, a waiver from the buffer requirements is appropriate.
8. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than 2 lots within the subdivision.
 - b. All entrances shall comply with all of DelDOT's requirements.
 - c. There shall be a maintenance and access agreement recorded with the Final Site Plan to

provide for the perpetual maintenance of any shared access to these lots.

- d. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to grant approval for the subdivision for the reasons stated in the Motion. Motion carried 5-0.

2020-19 Monarch Glen

A cluster subdivision to divide 135.54 acres +/- into 246 single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The properties are lying on the northeast and southwest sides of Fisher Road (S.C.R. 262), approximately 456 feet south of Lewes-Georgetown Highway (Route 9). Tax Parcels: 235-30.00-141.00, 143.00 & 144.00 & 334-10.00-59.00. Zoning District: AR-1 (Agricultural Residential District) and GR (General Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit book, a copy of the staff review letter, a copy of the Preliminary Subdivision Plan, a copy of the PLUS comments received from The State Planning Office, a copy of the Applicant's TIS with a copy of DelDOT's response letter to the TIS, a copy of a letter from Sussex County Engineering Department Utility Planning Division, a copy of TAC comments including the US Department of Agriculture, Delaware Electric Coop, The Sussex County Engineering Department Public Works Division, The Department of Health and The Delaware Department of Agriculture, a copy of the draft Homeowner Association restrictions for the property, one mail return, and one comment letter which has been circulated to the Commission.

The Commission found that Mr. James Fuqua spoke on behalf of the Applicant, Monarch Glen, that also present was Mr. John Richardson; that the request is for an AR-1 cluster subdivision; that the land is located on the south-side of Fisher Road, approximately 825 feet south of the Fisher Road and Route 9 intersection and roughly 1.25 miles east of Harbeson Road; that the parcel contains 125.5 acres; that all but 1.29 acres +/- are located on the south-side of Fisher Road and a 1.29-acre parcel that is located on the north-side of Fisher Road; that approximately 13.9 acres of the property, in the northern portion, closest to Fisher Road, is General Residential Zoning; that the remainder of the 111.6 acres of property is zoned Agricultural Residential; that according to the 2019 Comprehensive Plan the property is located in the low density area with the exception of the GR land which is located in the existing development area; that the land is in the Investment Level 2 and 3 under The Strategies for State Policies and Spending Document; that the proposed subdivision will contain 246 single-family lots and recreational areas; that gross density of approximately 1.96 lots per acre; that there is a wide-variety of zoning designations and uses in the area surrounding the property; that along the south-side of Route 9, east and west of the Fisher Road intersection are multiple parcels of land zoned C-1, General Commercial, and CR-1, Commercial Residential with a wide variety of retail and commercial uses; that the most recent change of zone in the area was a change of zone to CR-1 for a parcel at the corner of Fisher Road and Route 9 which is now a Dollar General store; that west of the Dollar General store, on the south-side of Route 9 is the Cool Springs Storage Facility, which is also zoned CR-1 and completed within the past year; that across Route 9 from the Dollar General at the corner of Route 9 and Hudson Road there is a 18-acre parcel that was re-zoned I-1, Institutional Zoning, for the Bayhealth Outpatient Center and Emergency Department; that on the north-side of Route 9 there are several residential developments fronting with entrances off of Route 9 such as Hunter Mill Estates, The Trails of Beaver Creek, Shoreview Woods; that fronting on Harbeson Road are The Meadows of Beaver Creek and Lazy Lake; that adjacent to the site is agriculture lands and residential uses including The Cool Spring Farm GR zoned subdivision to the east and Cool Spring Manor development to the south; that central sewer will be provided by Artesian Wastewater Management, Inc. who has a Certificate of Public Convenience and Necessity to

service the area; that an on-site gravity collection system will tie into the onsite pump station which will connect to Artesian's existing force main on Route 9; that central water for domestic use and fire protection will be provided by Artesian Water Company who is already servicing the area; that there are ability to serve letters from the Artesian Company in the exhibit book; that stormwater management facilities will be designed and constructed in accordance with DNREC's current sediment stormwater management regulations and approved by the Conservation District; the stormwater facilities will be designed to maintain the natural drainage characteristics of the site; that the facilities will include natural looking features, stormwater ponds will be wet and oversized to accommodate unusual storm events; that a wetland evaluation was performed by Geo-Technology Associates, Inc; that the preliminary evaluation identified areas of jurisdictional and possible jurisdictional wetlands; that upon final evaluation 4.8 acres of jurisdictional non-tidal wetlands were found on the site subject to regulation by the U.S Army Corp of Engineers (USACE); that a jurisdictional determination by USACE has been requested; that the non-tidal wetlands are concentrated in the northern portion of the site, nearest to Fisher Road; that because of the location, a small portion of wetlands will be impacted by the development's main entrance from Fisher Road; that the entrance road has been designed to have the least impact on the wetland area; that the impact wetland area is 0.06 acres; that approval for the crossing will be obtained under USACE nationwide permitting process; that under the Federal Emergency Management Agency's (FEMA) floodplain maps the property is located in Flood Zone X, which is outside of the 100-year floodplain; that the U.S. Fish and Wildlife Service (FWS) confirmed that no federally proposed or listed endangered or threatened species associated with the site; that DNREC did not identify any state-listed species; that State Historic Preservation Office stated there were no known archeological sites, no known national eligible features and archeological potential of the site is low; that DelDOT did require a Traffic Impact Study (TIS) which was performed by The Traffic Group; that a TIS review letter was issued by DelDOT on April 23, 2021; that DelDOT is requiring road improvements, involving additional right-of-way dedication and entrance improvements; that the entrance improvements include a through-lane and a right-turn lane on east bound Fisher Road and west bound Fisher Road; that the turn-lane distances will be determined by DelDOT; that the Applicant will be required to make an equitable share contribution to a DelDOT Signal Revolving Fund for possible future traffic signals at Route 9 and Cool Spring Road, as well as Route 9 and Joseph Road; that all improvements required by the Applicant will comply with pedestrian and bicycle features per DelDOT regulations; that there is a 150-foot wide Delmarva Power easement that runs through the middle of the property in a north to south orientation and that nothing will be constructed within that area other than a street-crossing to the western part of the subdivision; that a large portion of the northern boundary of the site is adjacent to the railroad track right-of-way that runs from Georgetown to Lewes; that the rail has been taken out of service from Lewes to Gravel Hill Road but the right-of-way will have a new purpose in the future with the DelDOT Rails-to-Trails Project; that the Rails-to-Trails project will provide pedestrian and bicycle path from Lewes to Georgetown which will be connected to Rehoboth Beach and potentially Milton; that the Lewes to Georgetown trail has already been constructed from Lewes to Route 9 at Cool Springs and that construction has begun for the first section from Georgetown heading east; that the subdivision will contain 246 single-family lots; that the lot sizes vary from 7,505 sf. to 13,670 sf.; that the average lot size is 8,931 sf.; that almost every lot borders some type of community open space; that the site is currently consists of 118 acres of woodlands; that the development will necessitate the removal of 89 acres of woods; that there will be 29 acres of woods preserved and will be incorporated into the 30 ft. agricultural residential buffer surrounding the site; that Agricultural Lands required a 30 ft. forested buffer and in the cluster Ordinance from the boundary of the property; that the buffer will consist of the existing mature forest which will extending around the perimeter of the development with the exception of the Delmarva Power easement; that in many places of the development the buffer exceeds the 30 ft. minimum buffer; that the entrance from Fisher Road will traverse through a natural area with woodlands and wetlands, the entrance was

designed with conformity to the Comprehensive Plan Community

Design Standards; that a 25-ft. buffer will surround the perimeter of the wetlands; that the 32-ft. wide road and 5-ft. sidewalks will maintain a 25-ft. buffer from the wetlands that are not impacted by the nationwide permit; that the subdivision streets will be private and built to Sussex County standards; that the streets will have downward screened lighting; that sidewalks will be located on both sides of the streets; that there will be street trees along the internal roads; that are agricultural lands located at the western end of the development; that there will be a stub connection at Saddle Wood Dr. that will extend to the adjacent farmland and anticipation for future development; that there will be a pedestrian and bicycle interconnection from the development to the bike trail; that currently is an abandoned right-of-way, but will be the future Lewes to Georgetown bike trail; that the bike design will be constructed with sufficient width and a base foundation to accommodate emergency vehicles; that emergency vehicles could also access the development by the future State bike trail; that there is talk of a future bicyclist bridge over Route 9; that DelDOT's current plans are to extend the bike path along the north side of Route 9 down to the Route 9 and Fisher Road intersection, which is signalized with a controlled pedestrian and bicycle crossing; that the trail would continue on Fisher Road and then resume west on the right-of-way; that the Applicant contacted Mr. Mark Shore, with the Land Trust, and offered the 1.29-acre parcel, on the north-side of Fisher Rd, as a donation to the Trust to utilize for the bike trail; that there are potential right-of-ways dedications for DelDOT and possible utility easements that would have to be finalized before it could be transferred; that the 1.29-acre is passive open space not in the community and the Applicant feels it would be better to be utilized by the public; that if this donation would be approved, the revised Preliminary Subdivision Plan would indicate the parcel as other lands rather than part of the subdivision; that there will be a community recreational area at the end of the entrance road; that there will be a clubhouse with 2,000 sf. of floor area; that the clubhouse will include meeting areas, fitness room, bathrooms, an outdoor pool with deck, and a playground; that there will be a mailbox facility near the clubhouse; that there will be 36 parking spaces at the recreational area; that additionally there are 3 neighborhood landscape parks located within the community; that the neighborhood parks will be gathering places with benches and will be appropriately located throughout the development; that the total open space of the development including recreational features, stormwater management ponds, wetlands and buffers is approximately 59 acres, which is 47% of the site; that the property is in the Cape Henlopen School District; that a schoolbus stop will be located either at the clubhouse or at the entrance at Fisher Road will be coordinated with the school district; that the site is in the fire service area of the Milton Volunteer Fire Company; that Monarch Glen will have a homeowners association (HOA) comprised of all the lot owners; that the HOA will be responsible for enforcing the community's declaration of restrictions, collecting assessments and maintaining streets, sidewalks, entrances, stormwater management facilities, landscaping and recreational areas; that it is estimated the development will be constructed in 5 phases; that it would be approximately 50 lots per phase; that the Applicant requests that requirement for the recreational complex be completed prior to the issuance of the 150th building permit and the Application and development design is in accordance with the AR-1 cluster design requirements and the Superior Design criteria of the Zoning Ordinance.

Ms. Stevenson stated that the area to the north of the property, between the development and Route 9 is proposed to be a shopping center; that she questions what rules exist to access the bike path with vehicles to make the shopping center accessible to the residents of the development, without having to access Fisher Road and what are the rules and permitted uses of the Delmarva Power easement.

Mr. Fuqua stated he was not aware of the proposed shopping center in the area; that there are no current rules; that the residents could not cross as the area is owned by someone else; that he believes it is owned by The State; that currently powerlines are located on the Delmarva Power easement; that the property is still owned by the property owner and the easement allows Delmarva Power to come to check the

power lines; that it is prohibited to interfere with that use; that the development will be doing nothing on the easement other than the permitted road crossing under the terms of the easement; that the stub road in the future could tie-in and that the proposed shopping center is under the same property owner but the Applicant has nothing to do with the proposed shopping center.

Ms. Wingate mentioned that she liked that the development is set off the roadway; that it is aesthetically pleasing; that she questions if bullet # 6 was addressed within the packet and it stated the elimination of a stormwater pond within the hydric soils is recommended.

Mr. Fuqua stated the PLUS letter is dated June 21, 2020; that there are two sections to the PLUS letter, the Code requirements agency permitting requirements and another section for recommendations; that in the PLUS letter DNREC had made some incorrect statements in the requirement section, regarding agency requirements, stating that stormwater ponds, infrastructure and lots should be eliminated in areas with hydric soils; that there is no such requirement; that the statement was more of an opinion or recommendation; that he contacted Ms. Dorothy Morris at the Office of State Planning Coordination (OSPC), who spoke with the Director, Mr. David Edgell; that there is a letter in the file from Mr. Edgell stating the comments made were not requirements; the original PLUS letter was amended to remove the statements as requirements; that the letter stated it was an error; the Application complies with the requirements, but it is not in compliance with DNREC's wish list.

The Commission found that Ms. Janice Beckett spoke in support of the Application; that the Application is a positive outline of how to improve the community; that she grew up on Fisher Road and now lives on Hudson Road; that she is happy with the growth and development of the area and she would like to see road improvements, such as sidewalks and better lighting, on Fisher Road

The Commission found that Mr. Keith Steck spoke in opposition of the Application; that he owns property on the south-side of the proposed development; that he feels a cluster subdivision is inappropriate for the property; that he is unclear of the project size; that the Planning & Zoning description is 135 acres; that the PLUS documents stated 125 acres; that the DelDOT memo from June 25, 2020 stated 124.7 acres; that the Sussex County Engineering Department TAC memo from October 12, 2020 stated 124.69-acres; that the total property from adding the property totals from the Sussex County property database equals 125 acres; that Morris Ritchie Associates preliminary site plan documents from July 20, 2021 stated 125.54 acres; that he feels the discrepancy comes from the open space; that several documents state 57-59% of the site is open space but at looking at the project it does not look like half of the project is open space; that he questions if the Delmarva Power easement considered part of the project's open space; that there are very large power lines in the easement; that he has concern regarding liability if someone were to be injured within the easement; that he is concerned about the deforestation of the site; that the project plans to cut 85 acres of the 99 acres of woodlands; that the amount is not a minimal impact; that he questions how much of the wetlands will be cut; that DNREC commented in the PLUS report that the project area east of the powerlines is located in a Delmarva Ecological Network and that cutting 90% of trees will negatively impact water flowing through various creeks and rivers feeding into the Delaware Bay; that this will harm the quality of the Delaware Bay; that the PLUS review notes that removal of substantial woodland will negatively impact the surrounding communities by driving deer into residents yards and that mosquitoes will become an issue; that the mosquito issue will become an expense for local communities as stated by Mr. Christopher Flathers in the June 24, 2021 letter responding to the PLUS review; that the entrance to the property is a serious issue; that the property is extremely close to the railroad; that the intersection traffic will increase; that the bike path will have a lot of traffic as the commercial property behind the project plans to tie into the bike path as well; that in the project the traffic from the proposed surrounding commercial, residential and hospital projects have not been calculated; that with the increase of

thousands of vehicle trips the bike path will become a dangerous crossing; that he suggests, if the project does get approved, a pedestrian/bicycle bridge should be required or move the entrance to the development; that he feels the project is out of character to the surrounding area; that the property to the west and below the development is in agricultural preservation; that the majority of the surrounding communities are wooded; that the increased traffic will disrupt the peace and quiet nature residents are seeking; and that he is concerned of the project effects to Lavender Fields.

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

Mr. Robinson asked if the Delmarva Power easement was included in the Application's open space calculation; that the requirement for open space is 30 acres and the project currently exceeds that at 47 acres; that the Zoning Code states utility facilities, including electric utilities, are not permitted in the calculation of open space but only the location of the utility poles would not be considered in the calculation and the rest of the easement would.

Mr. Fuqua stated that the Delmarva Power easement was included in the open space calculation; that the property will be owned by development; that the easement is for the powerlines to go across the property; that the project currently exceeds the requirement for open space; that the 150-ft. wide easement is open space under the Zoning Code and he believes the Zoning Code definition of utility facilities to be the development infrastructure utilities.

Ms. Stevenson questioned if a sidewalk could be placed along the frontage of the property on Fisher Road

Mr. Fuqua stated he believed the State plans to bring access for the bike trail down Fisher Road to the railroad right-of-way; that on the developments access to Fisher Road the Applicant will have a 15-ft. dedication with a shared-use path; that he believes DelDOT is already requiring the Applicant to do so.

Mr. Hopkins questioned if the Applicant would be willing to put seating areas in.

Mr. Fuqua stated that DelDOT will make those requirements; that the bike path will have facilities for recreation and passive seating areas but the plans are not finalized as of yet and he cannot provide confirmation.

Chairman Wheatley mentioned that there are different jurisdictions and levels of government involved in development plans; that the Planning and Zoning Commission is limited to where they can require people to do things and the abilities of the Commission are limited to only the parcels listed in the Application.

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

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

In relation to Application 2020-19 Monarch Glen, Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

multi-family (41 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 20.91 acres, more or less. The property is lying on the west side of Williamsville Road (S.C.R. 395), approximately 0.76 mile southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-289.05.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit booklet, a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response confirming a Traffic Impact Study is not required, a copy of a letter received from Sussex County Engineering Department Utility Planning Division, a copy of the PLUS letter, two mail returns, and one letter of opposition which has been circulated to the Commission.

The Commission found that Mr. Tim Willard, Esq. was present on behalf of the Applicant, Mayapple Farm, LLC; that also present are the owners of the property, Mr. Lawton Myrick and Mrs. Mindy Myrick, Mr. Steven Marsh with GMB, and Mr. Ed Launay with Environmental Resources, Inc.; that the Application is for a Conditional Use for 41 single-family detached condominium units; that the parcel contains 20.91 acres; that it is off Williamsonville Rd which runs south of Route 54. and north of the Maryland border; that the property is in the Agricultural Residential (AR-1) Zoning District and is designated as being within the Coastal Area on the County's Future Land Use Map; that a variety of uses are permitted in the Coastal Area; that the permitted density is 2.178 per acre; that the Applicant is proposing a density of 1.9 units per acre; that these are single-family homes but all common area would be owned by the Condominium Association; that the maximum number of multi-family dwelling structures will not exceed 2 dwelling units; that there is only 0.05 acre of wetlands; that there will be 12.86 acres, which is 63% of open space; that there will be a 75-foot vegetative buffer along the property frontage on Williamsville Road; that in the PLUS comments the property is referred to be a Level 3 and Level 4; that the comments are a guide and not the reality of the area; that there is a fair amount of single-family living around the area and Medium Residential Zoning; that to the east of the property is Americana Bayside which includes townhomes and single-family developments; that to the west is Bayview; that the proposed Application is marketed for people looking for second homes, or elderly residents that desire low-maintenance homes; that the Application is consistent with the Sussex County Land Use Plan; that there would be houses with parking below the home; that the floorplan will be more condensed and will provide less impervious area; that the Applicant is trying to do the equivalent of a cluster-design which provides more open space in a way that is more marketable; that there will be a 50-ft. buffer where there are tidal wetlands; that the proposed residents will reside on the uplands; that the non-tidal wetlands are wooded and will remain as it currently is with a 25-ft. buffer; that a 30-ft. vegetative buffer will be placed around the property in the areas adjacent to all other properties; that with Soil Conservation District approval there will be two wet stormwater ponds; that there would be a kayak launch at the lagoon that will lead into the bay; that at the entrance of the property there is a pool and pool complex; that there will be a required multi-modal path along Williamsville Road; that sidewalks will be located on one side of the street adjacent to the stormwater pond; that there are no endangered species located on the property; that 82 total parking spaces are required but the Applicant is providing 108 parking spaces; that there would be a parking space under the home, in the resident's driveway and additional spaces for guest parking in various places; that Artesian Water Company will provide water; that sewer will be annexed into the West Fenwick Sewer District; that the project will have central water and County sewer; that the project will add an economic benefit to residents in the area by providing construction employment and bring increased financial revenue to the area; that the project integrates into the present terrain by only developing the uplands; that the project has a smaller footprint with the current design; that the project is preserving all the slopes to prevent a lot of grading; that there will be no use of wetlands; that there will be preservation of natural features; that there will be minimal tree and soil removal; that an adjacent property owner, Ms. Carol Camilleo, had concerns about the construction; that there will be conditions to construction limitation times and signage; that

the Final Site Plan will obtain the approval of the Sussex Conservation District; that all entrances will comply with all of DelDOT's requirements; that an area for a schoolbus stop will be established if necessary; that the location of the schoolbus stop will be determined by the School District; that road naming and addressing will be subject to further review by the County; that the Final Site Plan and record of Condominium Declarations for the property will prohibit the application of fertilizer or similar soil additives on the property by individual property owners; that all fertilizers and soil additives will be managed by the Condominium Association using best management practices; that all recreational amenities will be completed no later than the 20th Building Permit; that the Final Site Plan will include a landscape plan for all the buffers; that all construction, site work, grading and deliveries will only occur from Monday through Friday, between 7:00 am through 6:00 pm, Saturdays 8:00 am through 4:00 pm, with no Sunday construction; that a 24 x 36-in. bi-lingual sign will permanently be placed at the entrance of the site confirming the hours during construction and the preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan depicting and noting the conditions and the Final Site Plan will be subject to review.

The Commission found that Mr. Lawton Myrick spoke on behalf of his Application; that it is his goal to create a note-worthy residential project that he would be proud to be associated with; that he feels single-family homes were the best fit for the property site; that the property is in a desirable location; that with the right vision for the site it will lend itself to a nice enclave of homes; that due to small size and semi-custom architecture the neighborhood will have a boutique feel to it compared to larger subdivisions; that a difference in architecture was sought to set Mayapple Farms apart from other developments; that he spent money out-of-pocket to have 3 homes designed at 3 different elevation levels; that the intent is for a raised beach-home style with room for parking and storage underneath and the first floor can be finished to the owners liking; that the main living areas would be on the second and third floors; that he is partnering with a local builder that also shares the Applicant's vision and willing to invest money into further developing the home plans and he and his wife are considering owning one of the homes and becoming residents of the community and not just the developer of the project.

Ms. Wingate questioned if the north-end roadway will be conducive for emergency vehicles to turn around in, if there will be signage for no parking in the area, and asked for clarification on the location of the buffers.

Mr. Steven Marsh, an engineer with GMB, stated that the turn-around at the end will have to meet the State Fire Marshall's requirements and approval; that the area is not for parking and there will be signage posted stating it is a no-parking area.

Mr. Lawton Myrick stated the existing woods will not be taken out and will serve as the wooded buffer; that the intent of the Application will plant a 30-ft. buffer with possible topsoil to create a small berm and the existing woods will remain intact within the 30-ft. designated area where it already pre-exists.

Ms. Wingate stated she did not see the report from Mr. Ed Launay and requested that Mr. Launay confirm the GMB report accurately reflected his findings.

Mr. Ed Launay stated he did write a letter regarding threatened and endangered species on the site; that he also assisted GMB on parts of the PLUS response; that there are no tidal wetlands on the site; that the tidal wetland buffers measure from the lagoon; that the lagoon is tidal waters; that there is a 50-ft. required buffer from the lagoon which is provided; that the U.S. Army Corp of Engineers had previously issued a Jurisdiction of Determination Approval letter; that the letter has since expired; that he has issued a request for a new letter; that a permit is required from DNREC for the canoe and kayak launch; that it will be a small fixed pier that will go over the water somewhat, but will be close to the shoreline; there

will be a cradle attached to the fixed pier that will go up and down with the tide to place their canoe or kayak on; that the intent is not to have boats stationed in the area, but to make it that someone with a boat could potentially pick up a passenger.

Mr. Robertson asked if the lagoon was under the jurisdiction of DNREC or Maryland jurisdiction.

Mr. Ed Launay stated they have thoroughly researched the topic of the lagoon jurisdiction; that Mr. Bob Rigdon surveyed the area; that the lagoon is on the property line; that about 1/3 of the lagoon is located on the Applicant's property; that the other 2/3 of the lagoon is located in Maryland; that the Applicant has enough lagoon located in Delaware to be able to do what needs to be done.

Ms. Wingate questions what the clam-shell parking space is and what it will be used for.

Mr. Myrick stated the clam-shell parking was an aesthetic coastal look that he preferred; that he had originally seen at Bayside; that the location is designated for guest parking; that the driveways will be concrete slabs.

The Commission found that Ms. Wendy Megee spoke in opposition to the Application; that she and her husband have a 2,200 sf. home with a 1,000 sq. ft. full barn; that they recently fenced in 1.5 acres for their equine animals; that she is concerned about the effect of construction and pilings on her equine animals; that she is in favor of development and growth in the area; that she also has concerns about the water and the dense population in the area and the traffic in the area; that Williamsville Road is a small, tow-lane road, located in an agricultural area; that there is no bicycle lane and no sidewalks; that she has seen three accidents involving pedestrians on Williamsville Road in the few months she has lived in the area; that Williamsville Road is currently used as a construction entrance for the Bayside area; that she has concern for the increased amount of construction vehicles and their size on the small road; that she has concerns about the stormwater management plan; that her property borders that portion of the Mayapple Farm property; that it was not mentioned how it will be maintained and who will be responsible for maintaining it; that the area is already an AE 5 Flood Zone; that she had to bring in 50 truck loads of dirt to keep the grade up and the flooding down; that the lagoon will have to be dredged to use for boats and a kayak pier; that she is concerned about additional flooding from the effects of dredging the lagoon; she questions what measure will be taken to protect her property; that the dredging will also affect the ditch line on the Maryland side of the property; that the ditch is not maintained by the State of Delaware; that she request a greater amount of buffer like the additional buffer given to the other adjoining properties or a less amount of town homes in the proposed space; that the homes are large and will obstruct the views from the neighboring residents; that she questions if there will be obstructions or barriers all the way around the property; that she will end up looking at the fill pond; that she is concerned about potential noise from the fill pond and how it will affect her animals; that she did not recall this property being for sale in 2005, but does recall it being for sale in 2018; that she has concerns about the animals in the wooded area getting pushed out onto her or neighboring properties; and that the proposed Application does not fit in the area as a lot of it is agricultural.

The Commission found that Mr. Don Downey spoke in opposition to the Application; that he is concerned about the potential noise of the community; that he understood the buffer to be 30-ft. but had heard 25-ft buffer during the proposal presentation; that he questions who will maintain the vegetated buffer; and that he does not understand why it is sometimes referred to as a townhome and other times referred to as a condominium; that he is also concerned about the increased traffic impacts on the road; and that he is concerned about vehicle lights on his property.

Chairman Wheatley stated that a condominium is a type of ownership of the home and that cars will not

be able to park in the area and the State Fire Marshall's office would not approve that.

The Commission found that Mr. Sanden Swanson spoke by teleconference in opposition of the Application; that his concerns were the dangers of the road with increased traffic, the density of the area, the noise and effects of pile-driving the agricultural ditches; that he did not see some of the agricultural ditches on the proposed drawings and he feels that no construction should be permitted on Saturdays.

Mr. Marsh stated there are many ways to construct pilings; that the Applicant does not anticipate driving the pilings; that they are willing to speak with nearby residents regarding piling construction; that it is a surface water aquifer, not the confined drinking aquifer; that they are two different things; that he feels being on pilings allows the ground to stay at a more natural grade due to not having to put fill there and that he does not see an impact on drinking water under the current construction proposed.

Chairman Wheatley requested that Mr. Marsh address the concerns of flooding onto adjacent properties.

Mr. Marsh stated the Applicant will have to meet the requirements of the Sussex Conservation District; that they will have to show that the capacity that they are discharging does not exceed the capacity of the receiving channel that they are discharging to which is a ditch; that the ditch maintenance is under the maintenance agreement with Sussex Conservation District; that the Applicant can maintain what is on their property; that the Applicant cannot maintain anything on anyone else's property unless there is an agreement in place; that he is certain the Applicant would be willing to work with the Megees to make sure the ditch is maintained appropriately.

Ms. Stevenson requested a response to the concern of light, noise, and privacy issues of the stormwater management system next to the Megee property.

Mr. Willard stated that up to Ms. Megee's property is a 75-ft. buffer which connects to a 30-ft. buffer that goes down to the edge of Ms. Megee's property; that the back edge is already a wooded area that will not be disturbed and stormwater pond will be blocked by the 30-ft. vegetative buffer.

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

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

In relation to Application C/U 2249 Mayapple Farm, LLC, Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears, and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:50 p.m.
